

Comments on the National Action Plan on Business and Human Rights

Business in the Community Ireland (BITCI) welcomes the development of the National Action Plan on Business and Human Rights (NAP). Once finished, ensuring the implementation of this Action Plan is the next crucial step. Below are comments on the first draft.

Overall

Overall, there is scope for more definitive action with the use of **precise language to convey the commitment** Ireland has to protecting and respecting human rights throughout the NAP. For the most part, the words “encourage”, “promote”, and “raise awareness” are used throughout the document; these words do not put an apt responsibility on business. Both the Danish and Swedish NAP’s use appropriate terminology that puts an “expectation” and “obligation” on companies, primarily for state owned and/or large companies. There is a danger that this weaker language could undermine the importance of the actions themselves.

Similarly, in order to support the government’s commitment to implementation and to have a barometer in which to measure success, **timeframes and ownership** (*which government department*) of action points should be included in the NAP. (While a committee will meet each year to look at implementation, in the absence of timelines and ownership, there is a huge risk that important actions may fall off the agenda.) A weighting system for the action points would be useful in determining how best to plan the implementation process

Human Rights Due Diligence

Building on the first point and with reference to section 3(b) Human Right Due Diligence, page 7-8, The NAP describes what an effective human rights due diligence policy should contain and it states that the implementation group will “encourage the relevant business sectors and operations to develop human rights due diligence policies”. Including a minimum requirement or expectation on corporate **due diligence** rather than to just “encourage” would be impactful, especially in the case of State owned enterprises.

Similarly, a specification on the **review cycle period** for due diligence policies is needed on page 7 in the section detailing what an “effective human rights due diligence policy should include”. Human Rights are intrinsically linked to the political and cultural landscape of a country, these two issues are constantly transforming and shifting and so a periodic review cycle is key to ensuring that the most salient and contemporary issues are being regarded. A review cycle of every 2 years would be sufficient.

Gender Equality and Empowerment

Moving on to the section on the State Duty to Protect Human Rights, section 4, Gender Equality and the Empowerment of Women and Girls, page 32/33. The **Gender pay gap**, parental leave and female representation at board level are three key areas of consideration when looking at gender equality. Although these three areas are mentioned, the NAP could include more detailed action

points on how to address the issues. The gender pay gap in both Europe and Ireland is large and in Ireland it has actually grown in the last 5 years. The pay gap impacts the income that women earn throughout their lives, having a knock on effect to pensions and increasing a woman's risk of poverty in later years. Europe's 2020 vision has mentioned this gap as a key priority and the National Action Plan on Business and Human Rights should most definitely reference this issue and what Ireland intends to do to close the gap.

Many other European countries (UK, Sweden, Austria and Germany etc) have started to implement legislation to tackle the issue. This pay gap is inherently linked to the issues of seniority, diversity and parental leave. The Gender Pay gap has ramifications across sub sections (a) Enforce non-discrimination in recruitment, employment and labour and (b) Promoting gender balance in decision making and leadership positions, therefore a reference to action on the pay gap would make sense. Actions could include corporate pay audits and public reporting.

Sub section (c) Promoting women's rights internationally, page 33, makes reference to missions and agencies taking action on inequalities that women face including working hours and pay. This section should note that this is not just an overseas issue and that the relevant government departments and corporates need to tackle this issue in both Ireland and overseas locations.

Page 20 of the NAP references the introduction of the statutory paternity leave of 2 weeks. Until paternity leave is used by men (for a decent period of time, i.e more than two weeks) a lot of the difficulties faced by women in the labour market will continue to exist.

Migrant Workers

Similarly, the omission of **migrant workers'** is an oversight. Migrant workers (and vulnerable groups in general) could be mentioned after the gender equality section. In 2014, the Migrants Right Centre Ireland dealt with 2,076 cases approximately, a rise from 1,500 in 2013. The current refugee crisis may have a bigger impact on this in 2016 and onwards. MRCI estimates that there are between 20,000 and 26,000 undocumented migrants living and working in Ireland¹. Undocumented migrant workers are not protected by employment legislation and workplace exploitation is a persistent problem facing migrant workers. This should be considered in the NAP both under the State duty to protect and the corporate duty to protect. Possible things to consider for the NAP would be how to protect migrant workers' rights? What information should be made readily available to assist this protection? Ireland's adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families² should also be considered.

¹ <http://www.mrci.ie/our-work/justice-for-undocumented/>

² <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/international-migration-convention/>

Overseas territories and embassies

With regard to overseas territories and embassy training, page 29, what training will staff be given and how often will this be reviewed? Companies setting up abroad will face many challenges and therefore companies should be offered the same level of training as embassy staff. (Training is mentioned in both the Danish and Swedish NAP)

This section on training leads on to the gaps in section 3(d), page 28, in supply chain due diligence. Like due diligence in the NAP in general, there is room for more precise wording and commitments. The scope of supply chain due diligence in the NAP is limited with the primary focus on conflict minerals as opposed to conflict minerals as well as other areas such as labour rights, living wage, freedom of association, land rights etc. Focusing so heavily on conflict minerals alone increase the risk that this is all companies will consider. This issue could be addressed as part of the embassy training, or workshops (similar to the Danish NAP, page 11) where the embassy identify the potential human rights and supply chain risks and companies are expected to consider all of these in their operations and policies in that country.

As mentioned in the NAP, work needs to be done to ensure **effective remedy** for victims of abuse by an Irish company operating abroad. The NAP covers remedy available within the state jurisdiction but is weaker on overseas access to remedy. This leads to a large accountability gap. Research has shown that when victims outside of Ireland/Europe are affected by human rights abuses by an Irish / EU company they face significant barriers to seeking remedy. This in itself is a serious human rights issue. The US Alien Torts Statute is an example of state effort to remedy overseas issues arising from the activities of national company operating abroad. The government needs to take a stronger stance than in action point 49 and with our European counterparts prioritise finding a way to develop this area. The US Alien Torts Statute has been used to bring cases against US corporations operating overseas (e.g Bowoto V Chevron and Wang Xiaoning V Yahoo)

In sum:

- Appropriate commitment to the actions both in terms of wording, timeframes and ownership. Precise language to ensure the implementation of the NAP should be used by the State.
- To assist companies implement due diligence, an appropriate requirement regarding due diligence and review cycles should be specified.
- Inclusion of the Gender pay gap and an appropriate commitment and stance to gender equality
- Migrant workers and the protection of their rights should be included.
- A broader scope in relation to supply chain due diligence beyond just conflict minerals.
- Ensure quality and frequency of training for embassy staff and make similar support available for companies.

**Business in the Community Ireland
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