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

Joint Submission  
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FIDH (International Federation for Human Rights) and one of its member organisation in Ireland, FLAC (Free Legal Advice Centres) welcome the publication of the Working Outline of Ireland's National Plan on Business and Human Rights 2016-2019 on 10 December 2015.

Building on FIDH and FLAC's March 2015 [submission](#) in the framework of the consultation organised by the DFAT's Human Rights Unit, our organisations welcome the opportunity to submit additional comments based on the Working Outline.

### General Remarks

FIDH and FLAC welcome the consultation process organised around the development of Ireland's National Plan on Business and Human Rights, and hope the present submission will serve to further enhance reflections and contribute to the elaboration of a robust and ambitious National Plan.

The Working Outline successfully captures key issues related to the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs). It recognizes Ireland's international human rights obligations vis-à-vis the conduct of businesses and it rightly addresses issues which deserve specific attention such as the need for enhanced due diligence in relation to conflict areas and the crucial role played by human rights defenders.

However, our organisations **regret the over-reliance on voluntary measures** in the suggested action points. Ireland's National Action Plan on Business and Human Rights needs to include regulatory options in order to ensure maximum compliance to the UNGPs, and to align with Ireland's stated ambition to "make Ireland one of the best countries in the world in which to do business".

Voluntary approaches have repeatedly shown their limits when it comes to effective human rights protection. While mediation and conciliation can be useful and appropriate in certain cases, mandatory regulatory options such as incentives and sanctions are sometimes most effective and can contribute to prevent human rights violations (and thereby costly mitigation and reparation measures for businesses). The UNGPs, as well as the UN Working Group on Business and Human Rights' Guidance for National Action Plans on Business and Human Rights require states to identify and implement a **"smart mix of mandatory**

**and voluntary national and international measures”.**

Our organisations welcome references made to human rights due diligence throughout the document, as well as the government's intention to study how other countries have addressed this issue in their respective National Action Plans. We see a great opportunity to further strengthen the Working Outline by requiring businesses – and in particular state-owned or controlled companies - to conduct **mandatory human rights due diligence**. Such a requirement could build on ongoing legislative initiatives related to mandatory human rights due diligence being considered in European countries such as France<sup>1</sup> and Switzerland<sup>2</sup>.

The Working Outline could also clarify what type of businesses are covered in the guidance. FIDH and FLAC would recommend including all businesses, both domestic and multinational, given that all companies may have impacts on human rights throughout their activities or business relationships. Guidance could be sought from examples such as the 2015 UK Modern Slavery Act, applicable to companies doing business in the UK.

Finally, the **crucial issue of tax avoidance and evasion**, which is absent from the Working Outline, should be addressed in the National Action Plan, as it is closely interrelated to states' capacity to fulfil their obligation to protect human rights. Therefore the State should adopt a human-rights based approach to fiscal policy<sup>3</sup>, including the promotion of transparency, access to information and meaningful participation.

## **Pillar I - State duty to Protect Human Rights**

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

#### *(a) Civil Society and (e) Follow-up*

FIDH and FLAC acknowledge the various consultations organised by the Human Rights Unit and are grateful for the opportunity for civil society organisations to participate and provide input. From FIDH's experience in other NAP development processes, and with a view to ensure a constructive process, we strongly recommend providing feedback on the suggestions made by civil society and would welcome consultations where meaningful discussions and debates can take place, including the State's evaluation of civil society organisations' key recommendations and criteria used when recommendations are discarded.

The planned follow-up procedure including monitoring, evaluation and review, is a welcome and important process. It would be worth clarifying how the review will be articulated and what CSO's involvement is envisaged. Action points can also include whether the Plan will be subsequently revised and amended.

#### *(d) International Engagement*

FIDH and FLAC welcome the Working Outline's ambition to continue engaging with the UN Annual Forum on Business and Human Rights. While the Forum provides an interesting opportunity to exchange on various issues, it lacks concrete outcomes. We therefore recommend deeper engagement with relevant UN Special Procedures, including the UN Working Group on Business and Human Rights. Ireland can encourage the Working Group to act on specific situations and to concentrate its efforts in supporting rights-holders including human rights defenders.

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1 See bill proposal « Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre ». Adopted by the General Assembly in first reading on 30 March 2015. <http://www.assemblee-nationale.fr/14/ta/ta0501.asp>

2 See the « Responsible Business Initiative », popular initiative aiming at introducing mandatory due diligence for Swiss companies. <http://konzern-initiative.ch/?lang=en>

3 See notably « [A post-2015 Fiscal Revolution, Human Rights Policy Brief](#) », Centre for Economic, Social and Cultural Rights (CESCR) and Christian Aid, May 2014, <http://www.cesr.org/downloads/fiscal.revolution.pdf>

However, our organisations regret that the Working Outline contain no mention of the current efforts to strengthen the international normative framework on business and human rights. An open-ended intergovernmental working group (IGWG) was created in June 2014 in order to work towards the establishment of an international instrument on human rights, multinational enterprises and other business enterprises. This important process, which builds on the UNGPs and looks at further implementing, codifying these principles, and closing existing accountability gaps, should be seized as an opportunity to address business and human rights issues in the international arena.

We submit that in this important area, **Ireland should engage in good faith and in a constructive manner** in regional and international opportunities to strengthen the business and human rights framework, including **the work of the IGWG**, which will hold its second session in October 2016. Concerns around this process – such as those expressed by the EU - should be raised in a constructive manner in the context of these discussions.

## **2. Assessment of Legislative and Regulatory Environment**

### **(a) Workers' rights**

#### *(i) Industrial relations*

FIDH and FLAC recommend clarifying what is meant by “voluntary system of industrial relations”, and would suggest recommending businesses to implement international framework agreements whenever appropriate. The Working Outline should also include specific recommendations to ensure respect for the right to work and the right to an adequate standard of living, such as by raising awareness on the need to protect workers from precarious working conditions such as those at risk through low wages, low-hour contracts and unpaid internships.

#### *(i) Extractive Industries*

The draft EU regulation on Conflict Minerals referred to in the Outline is, as it stands, a voluntary initiative, which has been highly criticised by the European Parliament and CSOs for its weakness and for failing to effectively prevent fuelling human rights abuses in conflict-affected areas. Similarly, the Kimberley Process Certification Scheme is a voluntary initiative which has been deemed insufficient to prove adequate human rights protection.

FIDH and FLAC recommend supporting the introduction of mandatory due diligence and reporting requirements throughout the entire supply chain. Legislation passed in the US in 2010, requiring US-listed companies to conduct mandatory checks on minerals coming from the Democratic Republic of Congo and neighbouring countries, should be looked into as an example.

With regard to the implementation of the EU Directive on Non-Financial Reporting, we recommend that Ireland strengthens the directive – in order to make it meaningful to Irish businesses - by identifying the size of company that should report so that proper account is taken of the number of companies that are SMEs. The reporting should take account of human rights, social and environmental concerns. Noting the concerns of small companies about an overly burdensome reporting system, the National Action Plan might contain action points that allow for adequate consultation with SME representatives on how such reports could be presented.

### **(k) Military technology and equipment**

This section – together with action point 21 on the existing regime with regard to the dual-use export licensing system- should be reinforced. Export regulations for dual-use items should be reinforced, transparency and access to information regarding licences requests increased and appropriate monitoring

and sanction mechanisms put in place.<sup>4</sup>

### 3. The State as an Economic Actor

#### (a) State owned companies and agencies

FIDH and FLAC recommend integrating mandatory human rights due diligence requirements for state agencies and state-owned companies, including requiring human rights impact assessments to be conducted before undertaking business activities or granting financial support. State-owned enterprises should, rather than be encouraged, be required to follow human rights standards.

Again, the language of the Working Outline should be strengthened to be reflective of Ireland's human rights obligations and domestic legislation including Sec.42 of the Irish Human Rights and Equality Act 2014. State agencies and state-owned enterprises' staff should, beyond being "made aware of the UNGPs", be explicitly required to implement these principles in the exercise of their functions. State financial support to businesses should, beyond excluding traditional sectors such as weapon and ammunition, be conditioned upon respect for human rights.

#### (b) State investments

Ireland Strategic Investment Fund (ISIF) new Responsible Investment policy should be made public and open to public consultations. The policy should build on best practices, including human rights-based screening criteria.

#### (e) State as a party to commercial activities

Action point 24 on the transposition of the European Directive on Public Procurement (2014/24/EU) into Irish law could be strengthened and detailed. Regulatory measures should be recommended to ensure compliance of human rights, environmental and social standards by suppliers. Measures should also be taken to address challenges such as those resulting from outsourcing of services delegated by organs of the State.

#### (f) Trade and investment

FIDH and FLAC emphasize that the Plan must also cover investment agreements and related investment arbitration: as it stands, it solely focuses on trade agreements. Particular attention should be paid the lack of access to justice for victims of human rights violations resulting from trade & investment agreements. A first step could be for Ireland to conduct a study evaluating to what extent victims that might be affected by such trade & investment agreements can have access to recourse mechanisms, with the objective of implementing measures that can ensure they have access to justice. Such study could feed into broader discussions at the EU level.

FIDH and FLAC welcome the recommendation to provide trade missions with an assessment on the human rights situation prior to departure. In addition, Irish trade mission in countries with which trade and investment agreements are being negotiated should be invited to engage in outreach and capacity-building of local civil society organisations in order to ensure that these can understand the potential impacts, participate in negotiations and provide input. Expert civil society representatives could also be invited to participate in trade missions in order to bring in their expertise regarding trade and investment agreements' real and possible impacts on human rights and the environment, as was done for instance on the occasion of a Dutch trade mission in which NGOs were invited to participate<sup>5</sup>.

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4 See FIDH, « Surveillance Technologies Made in Europe : Regulation Needed to Prevent Human Rights Abuses », [https://www.fidh.org/IMG/pdf/surveillance\\_technologies\\_made\\_in\\_europe-1-2.pdf](https://www.fidh.org/IMG/pdf/surveillance_technologies_made_in_europe-1-2.pdf)

5 See notably « SOMO goes on a Trade mission to Colombia and is critical of the coal sector », <http://www.somo.nl/news-en/somo-joins-trade-mission-to-colombia>

Moreover, Ireland should, as part of its human rights obligations, exercise leverage on the EU and require that EU trade and investment agreements' negotiation mandate include discussions to secure:

- 1) efficient human rights protection mechanisms; and
- 2) enforcement mechanisms where human rights clauses are breached.

## **5. Civil Society and Human Rights Defenders**

FIDH and FLAC welcome the inclusion of a section dedicated to the protection of human rights defenders. Given the leadership role played by Ireland on this issue, we would suggest strengthening its provisions. The state's duty to protect the right to access to information and to participate should be re-emphasized. Irish embassies should be encouraged to increase protection measures for human rights defenders – and in particular women human rights defenders-by supporting concreted measures such as setting up rapid-response mechanisms, including for HRDs located in remote rural areas.

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

In addition to comments above under *(d) International Engagement*, the Plan should mention that Ireland should be encouraged to further participate in ongoing international processes, including those at the ILO (on global supply chains), EU level (various initiatives on Business and Human Rights) and Council of Europe (on the elaboration of a non-binding instrument on business and human rights).

FIDH and FLAC welcome the inclusion of human rights defenders protection, women's rights and the recognition of links to the Social Development Goals, which reference should also specifically refer to SDG n° 16 , namely “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”.

## **8. Conflict Affected Areas**

Rather than providing mere advice to businesses, Ireland should, as part of its obligations and whenever appropriate, explicitly dissuade companies from investing in conflict affected areas where they risk contributing directly or indirectly to human rights violations. CRH's recent decision to divest from Israeli cement firm Mashav which provided materials for the construction of the Annexation Wall in the Occupied Palestinian Territory is one recent illustration showing that companies are aware of associated human rights risks and are ready to divest if needed.

## **9. Education and Awareness**

As regards education and awareness, FIDH and FLAC would like to recall the imbalance of power between different stakeholders, and therefore recommend including education and awareness-raising measures targeting all stakeholders, including trade unions.

### **Pillar III - Access to Remedy**

FIDH and FLAC welcome the ambition to conduct a baseline assessment and strongly welcomes the inclusion of an action point to review how **to ensure remedy for victims overseas** of human rights abuses involving Irish companies, with a focus on barriers to justice.

There remain however many opportunities to reinforce this section. As is acknowledged by numerous States and stakeholders, Pillar III of the UNGPs remain the weakest pillar and too often the “forgotten” pillar. The National Action Plan provides an opportunity to flesh out and strengthen the crucial question of access to remedy. The study should result in concrete measures to ensure access to remedy for victims abroad, including by following relevant recommendations on access to justice discussed in the context of the development of a non-binding instrument on business and human rights at the Council of Europe – and which is referred to in the Working Outline.

Our organisations recommend the inclusion of an action points to **enhance the accessibility, independence, legitimacy, credibility and effectiveness of the Irish OECD National Contact Point.**<sup>6</sup>

The option to broaden the mandate of the Irish Human Rights and Equality Commission to enable it to receive and consider corporate related complaints should be further explored.

### **Conclusion.**

FIDH and FLAC again thank the Department of Foreign Affairs and Trade, and in particular its Human Rights Unit for advancing the development of a National Action Plan on Business and Human Rights and for the opportunity to submit our views as part of the consultation process. We understand that following consideration of submissions now being made, the Working Outline will go out to other Departmental stakeholders for consideration. Our organisations would be grateful to receive a proposed timetable for that process and an indication of when it is expected that a draft plan will be published.

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6 <https://www.dfa.ie/media/dfa/alldfawebstemedial/ourrolesandpolicies/int-priorities/humanrights/nationalplanonbizandhr/FIDH--FLAC.pdf>