



CIVICUS

**CIVICUS submission to the Department of Foreign Affairs and
Trade on the development of Ireland's National Plan on
Business and Human Rights**

27th February 2015

Executive Summary

CIVICUS welcomes the opportunity to contribute to Ireland's National Plan (NP) on Business and Human Rights. We recognise that Ireland is one of only a handful of countries that are taking measurable steps to implement the United Nations Guiding Principles (UNGPs) on Business and Human Rights at the national level. While we welcome the national plans already released by the United Kingdom, Denmark and Italy we believe that Ireland has an opportunity to develop a plan that raises the bar even further for business. Minister of Foreign Affairs Charles Flanagan recently stated that 'Ireland has an opportunity to become a leader in this area.'¹ We agree, and we encourage Ireland to seize this opportunity to set the standard for national plans yet to be written by the majority of UN Member States.

CIVICUS is a global alliance of civil society organisations that has worked for two decades to strengthen citizen action and civil society throughout the world, especially in areas where human rights are most at risk. Accordingly, this submission² encourages Ireland to adopt an expansive and progressive approach to developing the national plan, one that builds upon Ireland's solid human rights reputation and actively involves civil society organisations in its implementation.

CIVICUS believes that Ireland's national plan should include clearly defined and time-bound measures that will provide for meaningful **engagement with civil society throughout its implementation**. The national plan should also include plans for legal reform at the domestic level that will **improve transparency and tighten regulations for companies operating internationally**. Ireland must also ensure that

¹ Remarks made by Minister Charles Flanagan at the opening of the 14th NGO Forum on Human Rights, held at Dublin Castle on 7th November, 2014.

² This submission was drafted by Cathal Gilbert, CIVICUS Research Fellow.

the victims of human rights abuses by companies domiciled in Ireland have **access to remedies that actually work**. Finally, the national plan should set out the **parameters for future dialogue and advocacy** on business and human rights at the international level.

CIVICUS looks forward to further dialogue with the Irish Government and wishes the Department of Foreign Affairs and Trade success with this important initiative.

Dhananjayan Sriskandarajah
Secretary General

Background

CIVICUS has a vision of a global community of active, engaged citizens committed to the creation of a more just and equitable world.³ This is based on the belief that the health of societies rests upon a robust balance and open relationship between the state, the private sector and civil society. For many years CIVICUS members have attempted to encourage businesses to comply with international human rights law.

In 2011, CIVICUS made submissions on behalf of its members to the UN, in response to the *Report of the Special Representative of the Secretary General on The Issue of Human Rights and Transnational Corporations and Other Business Enterprises*. At that time, CIVICUS outlined its concern ‘that (a) the responsibility of state owned businesses to uphold human rights standards when operating outside the state’s jurisdiction, and (b) the state’s duty to regulate the overseas activities of businesses domiciled within its own jurisdiction, have not been articulated in accordance with the position taken by the UN Committee on Economic, Social and Cultural Rights (CESR). Additionally, we are deeply disappointed that there is an almost deafening silence concerning the role of civil society in driving human rights accountability by businesses.’⁴

Four years later extraterritorial liability and the non-inclusion of civil society remain pressing concerns for CIVICUS and our civil society members. Our 2014 State of Civil Society Report highlights a connected problem: ‘Even when corporations make global commitments, it is harder to scrutinise them and exercise accountability compared to intergovernmental institutions, partly because these lack the formality of

³ For more information on CIVICUS, please visit www.civicus.org.

⁴ <http://civicus.org/index.php/en/what-we-do-126/un-representation/geneva/445-civicus-submission-on-the-guiding-principles-on-business-and-human-rights-being-considered-by-the-un-human-rights-council>

state commitments, and partly because of resource disparities between corporations and those in civil society that seek to hold them to account.’⁵

We believe businesses should be held to the same standard as states for human rights abuses; this implies that binding international human right law must be applied to business. As such, CIVICUS welcomes the initiative by Ecuador, South Africa and states from the global south to begin a process of creating a binding international treaty on business and human rights. Until that happens however, UN Member States should do everything possible to encourage business compliance with human rights norms and apply the full force of domestic and international law to sanction violators and provide justice to victims. We believe that efforts to create a binding treaty and work aimed at breathing life into the UNGP are complementary. Creating a culture of business compliance with the UNGP now will create the necessary conditions for successful Irish implementation of a multilateral treaty in future.

Focus of this submission

In line with our global mandate, this submission focuses on impact of the NP on Ireland’s foreign policy and the responsibilities of Irish businesses operating around the world. It addresses aspects of all three pillars of the UNGP. We make a total of 9 specific recommendations covering three areas:

- Multi stakeholder approach with clear roles for civil society
- Mandatory requirements for business
- Ireland’s extraterritorial obligations and remedies

These specific recommendations sit within our overarching proposal to the Irish Government: that Ireland should play a leading advocacy role

⁵ http://civicus.org/images/SOCS_Synthesis_final.pdf

at the international level to ensure business compliance with human rights standards in the coming years.

As part of its ongoing diplomatic engagement, Ireland should create high-level dialogues on business and human rights with key partner countries. These dialogues would aim to further the international debate on an enforceable multilateral regime for business and human rights. They would also enable the exchange of lessons learned from the implementation of Ireland's NP and those of other countries as they come on stream in recent years. Perhaps most importantly, these forums will allow Ireland to set a high standard for the development of many national plans in future. Ireland should also use its position as a member of the UN Human Rights Council until the end of 2015 to fully support the working group on the issue of human rights and transnational corporations and other business enterprises. In particular, Ireland is encouraged to play a full role in the OHCHR programme of work to enhance accountability and access to remedy in cases of business involvement in human rights abuses. Ireland should also push for state reporting on Pillar I of the UNGP through the Universal Periodic Review (UPR) process, something noted as a possibility by the UN Secretary General in 2012.⁶

Specific recommendations

- 1. Adopt a multi-stakeholder approach that clearly defines a meaningful role for civil society in the implementation, monitoring and revision of the NP.** As stated above, CIVICUS welcomes the inclusion of civil society during the process of creating

⁶ Contribution of the United Nations system as a whole to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles on Business and Human Rights, Report of the Secretary General. A/HRC/21/21, at para. 37.

Ireland's NP. The Irish Government should continue this engagement to ensure that civil society organisations – both Irish and global – are included meaningfully in the implementation, monitoring and revision of the NP. Specifically:

1.1. At its outset, the NP should establish a multi stakeholder working group including representatives from business, civil society and government on an equal footing. The terms of reference for the working group should include: the regular monitoring of compliance by business, making recommendations to the government on target and standard setting, creating an early warning mechanism and providing input to ensure that the NP is periodically reviewed and updated.

1.2. Funding must be made available for civil society organisations to conduct independent research into the human rights impact of Irish businesses in several industries and in different parts of the world. Although the multi stakeholder working group would jointly agree the scope of the studies, the research would be conducted independently by civil society organisations, in consultation with affected communities in countries where Irish business operates. This research will help the Irish government to create an informed and regularly updated view of Irish business' human rights footprint.

1.3. Training for both civil society and business on the UNGP will be necessary to ensure active participation in the NP. This training should be provided regularly and accompanied by specifically developed training materials, informed by the research mentioned in Recommendation 1.2 above. Partnerships should also be developed with reputable business schools, universities and MBA programmes to ensure that students of business are made aware of the NP and new requirements for business.

2. Make pillar two of the UNGP mandatory for Irish businesses.

Ireland's NP should ensure that Pillar II of the UNGP – the Corporate Responsibility to Respect Human Rights – applies without exception to all businesses domiciled in Ireland. The NP should avoid any suggestion that Pillar II is voluntary. Far from damaging the competitiveness of Irish businesses, such a move would improve the reputation of Ireland's trade and diplomacy, particularly amongst developing countries, by increasing confidence of host country governments in the high human rights standard to which the Irish government holds its companies operating abroad. Making Pillar II mandatory can be done in two main ways:

2.1. Ireland should conduct a thorough review of relevant domestic legislation to ensure that it enables the state to take legal recourse against companies that do not comply with the UNGP. The review could include The Prevention of Corruption Acts; the Criminal Justice (Theft and Fraud Offences) Act 2001, the European Convention on Human Rights Act 2003 and other laws deemed relevant to the business and human rights domain.

2.2. Ireland should take steps to change the law to ensure that companies are compelled to reveal the names of their beneficial owners and these names be placed on a register. This reform is a key recommendation in the recently released Report of the High Level Panel on Illicit Financial Flows from Africa.⁷ The panel, chaired by former South African President Thabo Mbeki, revealed that approximately \$50 billion (and potentially a lot more) leaves the African continent in illicit flows each year. Forcing companies to reveal the names of individuals benefitting from international financial transactions, a step that was also endorsed recently by the G20, would be a significant development in the fight against transnational corruption and tax evasion.

⁷ http://www.uneca.org/sites/default/files/publications/iff_main_report_english.pdf

2.3. Irish companies should be required to report annually on their implementation of the UNGP. Such reporting should become part of companies' – initially those working internationally and ultimately all companies – statutory reporting requirements. The Irish government should ensure that mechanisms are put in place that enable action to be taken against companies who do not comply with this reporting requirement. The Irish Government could consider adopting or adapting templates for business reporting on human rights already developed by Shift/Mazars⁸ and the Danish Institute for Human Rights.⁹

3. Address extraterritorial obligations and ensure remedies are available for victims of human rights abuses by Irish businesses, wherever they occur. Pillar I of the UNGP makes it very clear that states 'should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights *throughout their operations.*'¹⁰ Although Pillar III of the UNGP only refers to the need to safeguard remedies for human rights abuses committed with the territory of jurisdiction of the state, Ireland should go further by promoting the development of viable judicial remedies for victims of human rights abuse by Irish companies in all parts of the world. Specific actions in this area should include:

3.1. Apply the Maastricht Principles on the Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights¹¹ in the NP. The Irish Government should pay particular attention to Principle 24, which provides *inter alia* that states should take measures to ensure 'transnational corporations and other

⁸ http://www.uneca.org/sites/default/files/publications/iff_main_report_english.pdf

⁹ http://www.uneca.org/sites/default/files/publications/iff_main_report_english.pdf

¹⁰ Section I.A.2 of the UNGP. (CIVICUS' emphasis).

¹¹ http://www.uneca.org/sites/default/files/publications/iff_main_report_english.pdf

business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights. These include administrative, legislative, investigative, adjudicatory and other measures.’

3.2. DFAT and Irish Aid should work more intensively to create multi stakeholder dialogue and initiatives on business and human rights in countries where Ireland has a long history of development cooperation. In particular, the NP should provide for cooperation with judiciaries in Irish Aid’s nine key partner countries (Ethiopia, Lesotho, Malawi, Mozambique, Sierra Leone, Tanzania, Uganda, Vietnam and Zambia). The aim of this cooperation should be to strengthen access to effective judicial remedies for victims of human rights abuse by business in poor and vulnerable communities. Based on the results of the research described in Recommendation 1.2, these cooperation programmes should also include outreach aimed at educating community members in areas affected by the activities of Irish businesses.

3.3. Implement regular symposia for Irish judges, civil society and business representatives to discuss remedies for victims of human rights abuses that take place outside the state. The aim of these symposia would be to formalise a dialogue and debate about the role of the Irish courts in upholding Ireland’s international human rights commitments and influence the evolution of jurisprudence in this area. Given the long history of exchange between Irish judges and their counterparts in developing countries, these symposia could also form part of international dialogues, potentially coordinated with the judicial strengthening initiatives described in Recommendation 3.2.

Conclusion

This CIVICUS submission emphasises the need for Ireland to seize a golden opportunity. Through collaborative partnerships with civil

society and business, we believe that Ireland can set the stage for greater global human rights compliance by the private sector in the years to come. Supporting, training and involving civil society will be key. In order to credibly play this international role, Ireland must ensure that domestic loopholes are closed and legislation is strengthened. Finally, Ireland must demonstrate strong leadership by facilitating justice for victims of human rights abuse by Irish businesses around the world.

We thank the Department of Foreign Affairs and Trade for considering this submission and we wish you every success with development of Ireland's NP.

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