



Submission to the 75th Session of the Committee on Economic, Social and Cultural Rights:

Written Inputs to the State Report

Submitted on 12 January 2024 by the Irish Coalition for Business and Human Rights

Reporting organisation

[The Irish Coalition for Business and Human Rights \(ICBHR\)](#) is a coalition of over 20 members including human rights, international development and environmental organisations, trade unions and academic experts, working collaboratively to progress corporate accountability, based on respect for human rights and the environment.

Members include: Action Aid, Centre for Business and Society of University College Dublin, Christian Aid Ireland, Comhlámh, DCU Business School, Fairtrade Ireland, Friends of the Earth Ireland, Front Line Defenders, Africa Europe Faith and Justice Network Ireland, Global Legal Action Network, Irish Congress of Trade Unions, Irish Council for Civil Liberties, Latin American Solidarity Centre, National Women's Council of Ireland, Oxfam Ireland, Proudly Made in Africa, Trinity College Dublin Centre for Social Innovation, Trócaire.

Our Submission

In March 2022, in paragraph 4 of its List of Issues Prior to Reporting ('LoIPR'), the Committee asked the Irish Government to ***“provide information on the results achieved with regard to the implementation of the State party’s national plan on business and human rights (2017–2020) [and to] provide detailed information on specific legislative and policy measures taken to ensure that business entities respect the economic, social and cultural rights of all; that they apply the principle of due diligence throughout their operations in the country or abroad; and that they assess and address the adverse impact of their operations on the environment.”***

In its reply to the above paragraph, the Government of Ireland asserted that *“Ireland was the nineteenth State to develop a National Plan on Business and Human Rights”*, and that *“the National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises is a standalone Unit in the Department of Enterprise, Trade and Employment”*, but provided no further information on results achieved with regard to implementation or on any other legislative or policy measures taken to ensure that business entities respect the economic, social and cultural rights of all.

In July 2023, the Irish government launched a consultation in relation to the preparation of a second National Plan on Business and Human Rights. This submission contains our responses to that consultation. Given the lack of detailed information provided by the Irish government with respect

to paragraph 4 in the LoIPR, this submission aims to provide essential context for the development of business and human rights in Ireland; fill in the blanks in relation to key legislative and policy developments which have occurred in recent years; and to provide key recommendations for the development of the new National Action Plan.

Irish Coalition for Business and Human Rights submission to the consultation for Ireland's second National Plan on Business and Human rights

The ICBHR welcomes the opportunity to make a submission to Ireland's second NAP on Business and Human Rights.

Since the first NAP was published there has been considerable movement and global consensus on the need for mandatory laws that hold companies to account for human rights and environmental harm and that provide access to justice for communities who have suffered harm.

While there is much consensus around the need for corporate accountability laws and the recognition of the impact of corporations on human rights and the environment, little has changed for many communities impacted by the actions of irresponsible business. [Coal](#) from mines in Cerrejón North-East Colombia are still being used by the state-owned Electricity Supply Board (ESB), despite years of well-documented environmental and human rights abuses associated with the operation of this mine.

Airbnb Ireland UC continues to provide an online platform for accommodation in the illegal settlements. Despite settlements being illegal under international law, Airbnb allows tourism-related businesses which are based in Israeli settlements to use its platform to advertise their services to potential customers around the world. Hosts and purchasers of these listed accommodations in the settlements contract with the Dublin-registered company Airbnb Ireland UC. Airbnb is named on the UN published database on businesses connected to illegal Israeli settlements in the occupied Palestinian territory, which lists companies engaged in economic activities connected with these illegal settlements, inextricably linked with human rights abuses.

In 2022 Frontline Defenders reported that the killings of rights defenders across the globe increased, with a total of 401 deaths across 26 different countries, compared with 358 deaths in 38 countries registered in 2021. Across the different human rights sectors, defenders working on the protection of land, environmental and Indigenous peoples' rights were the most frequently targeted. Front Line Defenders global [report](#) registered 194 murders of defenders working on these issues, accounting for 48% of the total global killings.

Recognising the current landscape of the new NAP

The Programme for Government – Our Shared Future (2020) makes a commitment to “*ensure that the Action Plan is further developed to review whether there is a need for greater emphasis on mandatory due diligence.*”¹

The Department of Foreign Affairs and Trade commissioned an independent “baseline assessment of legislative and regulatory framework (2019)” as part of a commitment to implement Ireland's National Plan on Business and Human Rights. The report notes, “*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*

¹ Programme for Government – Our Shared Future (p. 114)

ensure compliance by way of a mandatory regime.” It recommends that the state considers the adoption of mandatory human rights due diligence and that this ought to be considered as a minimum requirement for State companies.²

There has been significant progress in the development of binding corporate accountability laws. There has already strong recognition of the need for change and there is an emerging paradigm shift away from voluntary principles towards mandatory requirements for business related to human rights and the environment.

Across Europe, states have started to develop mandatory human rights and environmental due diligence legislation. France was the first in 2017, and since Germany and Norway introduced laws in 2021, and parliamentary processes are underway in Austria, Finland, Belgium, the Netherlands, and Luxembourg. Further proposals are being advanced by civil society across multiple European states.

On 23 February 2022, the European Commission published its proposal for a **Corporate Sustainability Due Diligence Directive (CSDDD)**. The Directive is aimed at cleaning up global supply chains and minimising the negative global impacts of business on workers, communities, and the environment. The draft Directive, which will ultimately need to be transposed into Irish law is a significant milestone in shifting away from the current reliance on predominantly voluntary standards towards firmer legal requirements for mandatory human rights and environmental ‘due diligence’ rules for businesses. The ICBHR continues to engage at EU level to ensure that the Directive is as ambitious and effective as possible.

In **June 2023 the OECD** updated its guidelines which strengthen the ability of rightsholders and civil society to hold corporations accountable for harms to people and the planet. The Guidelines now expect corporations to identify and address – through due diligence – their adverse impacts on climate change, animal welfare, biodiversity, deforestation, pollution, and other environmental concerns. The Guidelines recognise the responsibility companies have in achieving a just energy transition and call on enterprises to engage meaningfully with all stakeholders – in particular those affected – about business activity that may harm them. The Guidelines also expect enterprises to pay special attention to adverse impacts on marginalised or vulnerable groups and call on enterprises to refrain from reprisals against human rights defenders, address harms of reprisals in their own and business partners’ operations and help promote safe spaces.

At UN level, the open-ended intergovernmental working group (OEIGWG) on transnational corporations and other business enterprises with respect to human rights was established by Human Rights Council Resolution 26/9 of June 2014, with the concrete mandate "to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises". Since 2015, the Working Group has held eight sessions, with increasing participation by States and other relevant stakeholders taking part in the discussions and deliberations. In the last 5 years, the process has incorporated a pragmatic, balanced, inclusive, and progressive approach in complete synergy with other existing frameworks. Significant progress has been achieved in this process. It is possible to improve victims' access to justice and effective remedy through binding regulations that complement and reinforce voluntary norms such as the Guiding Principles on Business and Human Rights (UNGPs) and other non-binding international standards proposed by the ILO and the OECD. However, further work is still required to define the fundamental aspects to adopt an inclusive and balanced legally binding instrument (LBI). Broad and

² Department of Foreign Affairs and Trade (2019) “National plan on business and human Rights: Baseline assessment of legislative and regulatory framework” (p.52) <https://www.dfa.ie/media/dfa/ourrolepolicies/internationalpriorities/Baseline-Study---Business-and-Human-Rights.pdf>

active participation of all the actors, particularly of States, is necessary to enrich the process with their vision and contributions and to build on and achieve consensus.

The Third Revised Draft of the legally binding instrument was published on 17 August 2021 and subject of the discussions and debates during the Seventh Session of the OEIGWG which took place from 25 to 29 October 2021. One of the outcomes of that session was the establishment of a Group of Friends of the Chair composed of Azerbaijan (Eastern Europe), France and Portugal (Western Europe and others), Indonesia (Asia-Pacific), Cameroon (Africa) and Uruguay (Latin America and Caribbean). Unlike in previous years, the Chair-Rapporteur did not prepare a new draft based on the proposals made during and after the Seventh Session but suggested some proposals on select articles of the LBI.² The proposals submitted by States and the Chair proposals served as a basis of the debates and negotiations during the Eight Session which took place from 24 to 28 October 2022. Between April and June 2023, several intersessional consultations facilitated by the Friends of the Chair and supported by the OHCHR were held among states.³ Based on these consultations and proposals the Chair then prepared and published an updated Draft of the Legally Binding Instrument which was the subject of the Ninth session of the OEIGWG in October 2023.

Considering EU support and development of the CSDDD, and their engagement at the 8th session of the OEIGWG, there is significant movement towards an EU mandate to negotiate a UN treaty. This is important in moving the process for a UN treaty forward. As the EU representative stated at the 8th session: *"Business and human rights is currently one of the fastest developing areas in the human rights field. Preventing business-related human rights abuses and ensuring effective remedy and access to justice for victims of such abuses is not only a duty of States but also a responsibility of companies. The EU is strongly committed to this agenda and has been taking important steps to enhance our collective action. In this context, the EU believes in the potential of an international legally binding instrument to enhance global protection against business-related human rights abuses."*³

Ireland's new NAP must ensure that it reflects this current global context and prioritise Ireland's role in the development of a legally binding UN treaty, on the transposition of the CSDDD and the implementation of the updated OECD guidelines.

The Irish Coalition for Business and Human Rights in 2020 published its report [Make It Your Business](#) which outlines how Ireland can ensure businesses can respect human rights and the environment by introducing corporate accountability legislation.

It is essential that Ireland follows the example set by other European and global countries and begin the necessary preparatory work now for Irish due diligence legislation, including an access to justice and remedy framework, and a suite of primary national legislation that can enable a smooth transposition of the EU Corporate Sustainability Due Diligence Directive when passed. Consultation with relevant stakeholders, parliamentary debate, scrutiny in the relevant Parliamentary Committees, cross-departmental collaboration on workable legislation and an effective regulatory framework will all take time. We need to start this process now rather than waiting until a final Directive is agreed, which would only add further years of delay to the wait for meaningful, effective laws for corporate accountability. The EU Directive will form a baseline 'floor' of minimum standards across the EU and in certain areas Ireland can and should be more ambitious, depending on the Directive's final content.

The development of a new National Plan on Business and Human Rights presents an opportunity for increased ambition, which takes account of the international and EU developments and includes

³ <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/wgtranscorp/session8/igwg-8th-compilation-general-statements.pdf>

commitment to strong global, EU, and national regulation with respect to human rights and the environment.

The State duty to protect human rights

The State has a duty to protect against human rights abuses by business and to ensure access to remedy, through effective policies, legislation, regulations, and adjudication. Through existing international treaties, states are required to protect individuals and groups from human rights abuses, including by entities such as corporations. It is well established in human rights law that state obligations include a duty to regulate the conduct of private groups or individuals to ensure that they do not violate the rights of others, and to ensure access to remedy. Any legislation would also need to be backed by adequate enforcement and accountability mechanisms, including access to remedy for victims when companies fail to exercise human rights due diligence and harm to people, and planet occur.

As part of its duty to protect human rights, the State should prioritise Ireland’s role in the development of a legally binding UN treaty, on the transposition of the CSDDD and the implementation of the updated OECD guidelines.

Civil Liability and Access to remedy

In 2020, a [‘Review of Access to Remedy in Ireland’](#) commissioned by the Department of Foreign Affairs evaluated how best to ensure remedy for potential victims of human rights abuses abroad by companies domiciled in Ireland. It focused on legal, procedural, or financial barriers, and consideration of those who face additional barriers to remedy, including women. It states, “there is a significant accountability gap, propagating a context in which abuses will recur, combined with legal and practical barriers inhibiting remedy for potential victims overseas”. It identified existing barriers and gaps, and makes clear recommendations to enable judicial remedy, and enhance non-judicial remedy. Specifically, it recommends to “commence consideration of regulation of human rights and environmental due diligence in Ireland, cognisant also of developments in the legislative initiative at EU level”. The conclusions and recommendations of the ‘Review of Access to Remedy in Ireland’ were endorsed by the National Implementation Group on Business and Human Rights.

The ICBHR call for the new NAP to include the recommendations outlined in this Review, including identifying actor(s) responsible and timeframes for their achievement.

Key recommendations for the new NAP:

- The new National Action Plan should **scale up Ireland’s ambition** on Business and Human Rights, in line with the global consensus on the need to tackle corporate impunity and on the need for mandatory laws that hold companies to account for human rights and environmental harm and that provide access to justice for communities who have suffered harm.
- As part of its duty to protect human rights, the State should prioritise Ireland’s role in the development of a **legally binding UN treaty**, on the transposition of the CSDDD and the implementation of the updated OECD guidelines. The new NAP should reflect this prioritisation.

- It should include a commitment to **mHREDD legislation** and include actions around consultation with relevant stakeholders and cross-departmental collaboration on workable legislation and an effective regulatory framework.
- Specific and direct language should be used in framing commitments in the NAP. All commitments in the NAP must have clear timelines and **clear lines of responsibility**. It should include a clear programme of work to move each objective forward, attributing achievement of each action point to an identifiable and accountable actor.
- The **Department of Enterprise, Trade and Employment**, following its significant engagement in the drafting of the CSDDD, should play a more central role in the development and implementation of the National Action Plan on Business and Human Rights.
- Considering the review of access to Remedy in Ireland and its recommendation the **Department of Justice** should play a more central role in the development and implementation of the National Action Plan on Business and Human Rights and participation in the National Action Plan Implementation Group.
- It should outline clear actions that Ireland will take to progress the elaboration and ratification of an **international legally binding instrument** to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.
- It should commit to advance the recommendations of the **access to remedy** report to enable a strong liability and enforcement regime and improved access to remedy rules in Ireland, and inclusion of key recommendations as actions in the new National Action Plan
- It should continue to **ensure civil society participation** in these processes. Rather than through an “Implementation Group”, it should convene a similar group of stakeholders tasked with giving input and providing oversight but make clear that implementation of the plan is ultimately a responsibility of Government and Government Departments. This oversight group should include individual Members working in this area, but also the Irish Coalition for Business and Human Rights as a broad coalition.

Values embedded in the new NAP:

- Recognition of adverse impacts corporations have on climate change, animal welfare, biodiversity, deforestation, pollution, and other environmental concerns.
- Recognition of the responsibility companies have in helping to deliver a just energy transition.
- Enable and support meaningful stakeholder engagement, with human rights and environmental defenders, workers, and unions, and those affected by corporate harm. Rightsholders must be part of the solution and should have a role in consultations and design of the National Action Plan, along with monitoring implementation.
- Recognise the need for robust responsibilities for business in conflict-affected and high-risk areas, and ensure that they do not facilitate, finance, exacerbate or otherwise negatively impact the conflict or contribute to violations of international human rights law or international humanitarian law in conflict-affected or high-risk areas.

- Recognise the fact that human rights and environmental harms are not gender neutral. Gender responsive due diligence requires that attention be paid to the specifics of women's experiences and other marginalised groups. The NAP should give special attention to adverse impacts on marginalised or vulnerable groups.
- Recognise human rights and environmental defenders, address harms of reprisals in their own and business partners' operations and help promote safe spaces.