

Business & Human Rights briefing document

Trinity Centre for Social Innovation, Trinity College Dublin Business School

Introduction

The Trinity Centre for Social Innovation based in TCD's Business School seeks to make a positive impact on society and the environment through engagement, research, innovation and teaching.

Following the adoption of the UN Guiding Principles on Business and Human Rights (2011) and Ireland's National Plan on Business and Human Rights, (2017-2020) the Centre conducted research over the last year to establish a basic understanding of where Irish companies stand in relation to these principles and the objectives stated in the plan.

The research can be used to help inform government on a baseline for and progress against the National Plan on Business & Human Rights 2017 – 2020 (NAP). A random sample of 22 Irish domiciled, publicly listed companies with over 500 employees generating more than 50% of their revenue outside Ireland were examined using their published policies and reports. The assessment was conducted using a draft version of the [Core UN Guiding Principles Indicator Assessment](#) developed by the [Corporate Human Rights Benchmark](#) (CHRB). The results of the research are attached.

Context

The United Nations (UN) Guiding Principles on Business and Human Rights

In 2011, the UN Human Rights Council adopted the Guiding Principles on Business and Human Rights. These Principles, 31 in all, which apply to all business enterprises, address the risks of adverse impacts on human rights from business activities, and centre on 3 core pillars:

- the state duty to protect human rights
- the corporate responsibility to respect human rights
- access to remedy.

The National Plan on Business and Human Rights (2017-2020)

The Council of the EU adopted 'conclusions' affirming the EU Member States' commitment to developing and adopting national plans in line with these principles. In 2017, Ireland published The National Plan on Business and Human Rights (2017-2020). The Irish plan is a whole of government initiative, which seeks to give effect to the UN Guiding Principles on Business and Human Rights in Ireland. Following on from the launch of the report, the Irish government commissioned an independent baseline assessment of Ireland's legislative and regulatory framework concerning business and human rights.

Additionally, under the *EU Non-financial Reporting Directive* (NFRD)¹, companies are required to report on the development, performance, position and impact of their activity relating to respect for human rights, among other matters.

Business and the potential for human rights abuses internationally

The role of Business in society is a very important. It creates jobs, delivers products & services, develops life-saving medicines and innovative technologies. However, transnational companies and big companies have become extremely powerful - often exerting more power and economic influence over citizens than governments themselves.

This unprecedented power presents serious challenges for the protection of human rights. Individuals and communities affected by their activities have become, in many instances, subjected to appalling working conditions, environmental damage, landgrabs, and discrimination.²

In seeking justice, human rights defenders and their communities often experience threats, intimidation, violence and killings – with women facing particular gender based violations. Front Line Defenders documented the murder of 321 human rights defenders in 27 countries.³ Companies can cause harm, either directly or by colluding with others who abuse human rights. There are few effective mechanisms at national or international level to stop/prevent companies violating human rights or holding them to account. Victims affected by their operations – often already marginalised – are left powerless without the protection to which they are entitled, or meaningful access to justice.

Our Study

Our research using the CHRB indicators demonstrates that there remains a significant amount of work to be done by government and by the business community to ensure Irish compliance with the UN Guiding Principles, as envisaged by the National Plan on Business and Human Rights (2017-2020)

We exemplified a sample of companies that met the requirements of the European Non-Financial Reporting Directive (2014/95/EU). Specifically, we considered companies which were:

- (a) Publicly listed companies
- (b) **500+ employees** AND *either* a balance sheet total of more than **€20 million** or a net turnover of more than **€40 million**.

Additionally, the study only considered companies which:

- (c) Were Irish domiciled
- (d) Earned >50% revenue outside Ireland.

¹ Transposed into Irish law by the European Union (Disclosure of non-financial and diversity information by certain large undertakings and groups) Regulations 2017.

² [Making a Killing](#), Trócaire, 2019.

³ Front Line Defenders [Global Analysis 2018](#)

From the population of such companies, 22 were examined, from the following sectors:

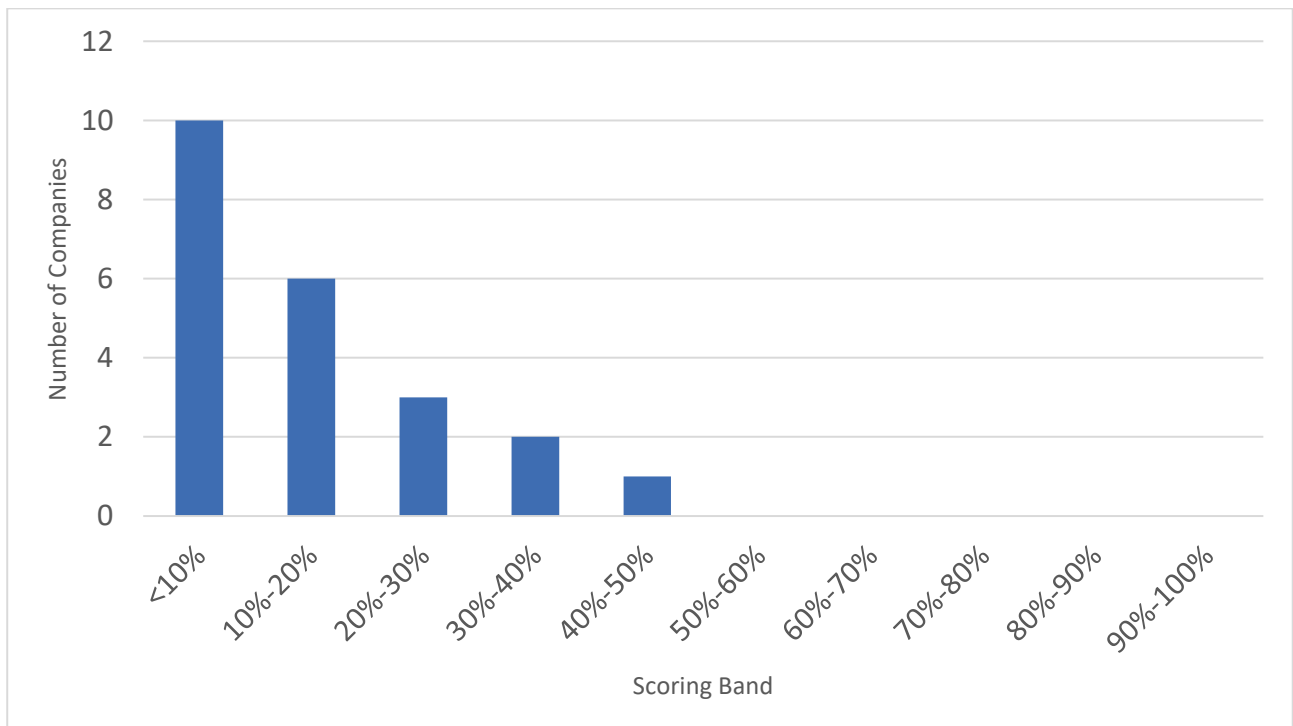
Sector	Number of Companies
Health Care	8
Materials	6
Consumer Staples (e.g. Food products)	4
Consumer Discretionary	2
Energy	1
Technology Hardware & Equipment	1

We examined relevant publicly available documentation from these companies across three measurement themes, which correspond to the 3 requirements of the corporate responsibility to respect human rights outlined in the UN Guiding Principles:

- Governance and policy commitments;
- Embedding respect and human rights due diligence;
- Remedies and grievance mechanisms.

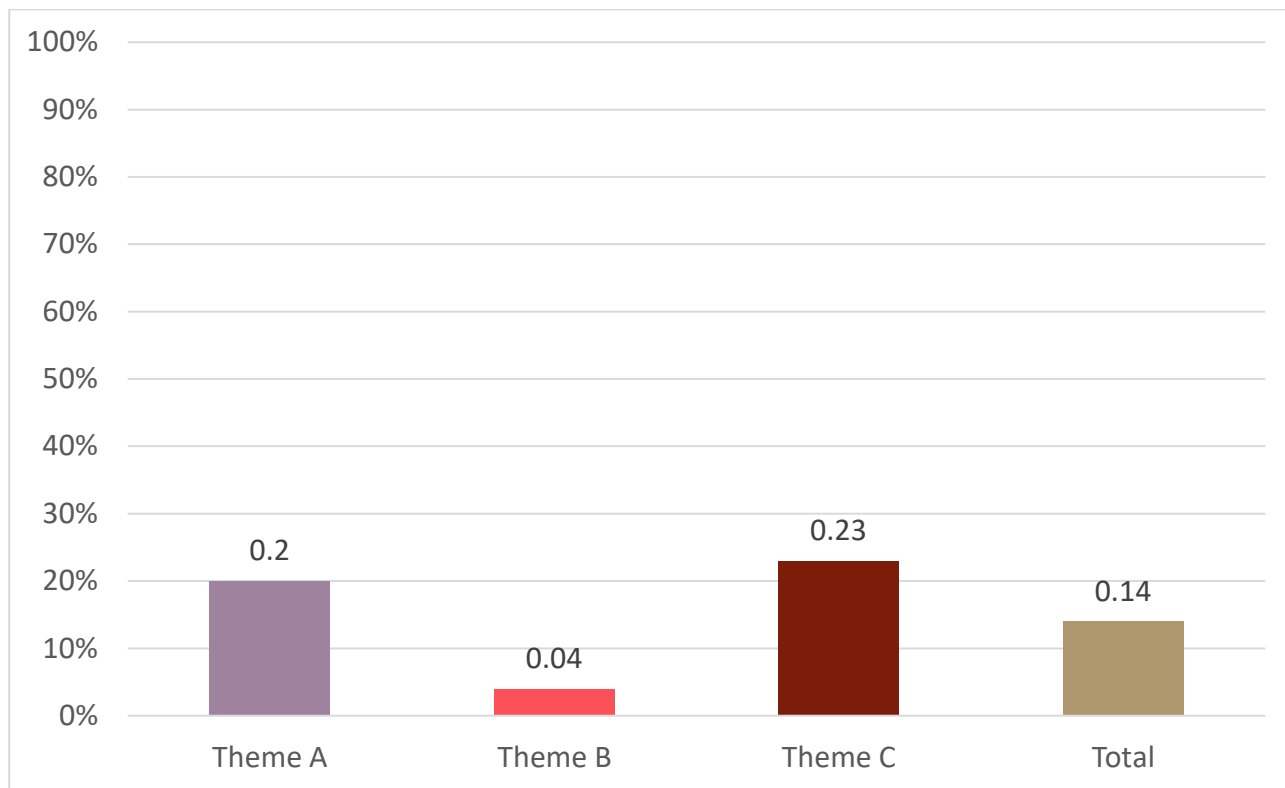
No company among the sample scored greater than 42% under the CHRB methodology.

Results by scoring band



While scores are low across all three measurement themes, the results demonstrated particularly low levels of engagement with Theme B – embedding respect and human rights due diligence.

Average results, by measurement theme



Theme A: Governance and Policy Commitments	Theme B. Embedding Respect and Human Rights Due Diligence	C. Remedies and Grievance Mechanisms
<p>These indicators aim to assess the extent to which a company acknowledges its responsibility to respect human rights, and how it formally incorporates this into publicly available statements of policy</p>	<p>Human rights due diligence is a fundamental expectation of the UNGPs. This theme further looks at the responsibility and resources for day-to-day human rights functions, indicating how the due diligence process is resourced.</p>	<p>These indicators focus on the extent to which a Company is able to/and provide(s) remedy in addressing actual adverse impacts on human rights</p>

Source: [Core UNGP Indicator Assessment methodology, CHRB](#)

Human rights due diligence involves identifying and assessing the actual and potential human rights impacts of a company’s operations through an ongoing process. It requires that companies integrate the findings of due diligence into internal processes, monitor the effectiveness of measures implemented to mitigate risks and communicate their findings

and actions to interested stakeholders.⁴ It is a vital component to the underlying architecture of the UN Guiding Principles – without it, they cannot be upheld. Accordingly, the lack of progress on this pillar is of particular concern.

A more granular analysis of the indicators also reveals that access to remedy remains a key stumbling block among the sampled companies, with no company addressing the remedy of adverse impacts and the incorporation of lessons learned in its policies or reports.

Pre-election recommendations to political parties:

- 1) Ireland should **actively work for the adoption of a UN treaty on Business and Human Rights** presently being drafted. As stated in "[The Global Island -Ireland's Foreign Policy for a changing World](#)", "Ireland has been one of the strongest and most consistent supporters of the three pillars of the UN's work: peace and security, development and human rights".
- 2) Ireland should **support mandatory human rights due diligence processes** in order to ensure compliance by companies. State bodies or those controlled by the State should lead by example in putting in place robust mandatory due diligence. The [independent baseline report](#) (DFAT 2019) on gaps in legislative and regulatory framework recommends - as a minimum - human rights due diligence should be a requirement for State companies, those with whom the State does business, and those that receive State support, including when doing business overseas.

⁴ FASTERLING, B. and DEMUIJNCK, G. (2013) 'Human rights in the void? Due diligence in the UN guiding principles on business and human rights'. *Journal of Business Ethics*, 116 (4), 799-814, p. 801.