

Committee on Foreign Affairs and Defence – 7th Dec 2021
Opening Statement – Garry Walsh – Policy and Advocacy Advisor, Trócaire

As my colleagues have already outlined, our coalition is of the view that the key to addressing the issue of corporate harm to the environment and human rights is to move beyond voluntary commitments towards legally binding regulation. This would be the most effective way to systematically address these issues, such as in the cases that we've heard about in Colombia and Palestine.

Ten years ago, the UN agreed a set of key 'Guiding Principles' on Business and Human Rights. These Guiding Principles provide a framework for how states and businesses should meet their obligations and responsibilities to respect and protect human rights, and to provide remedy for abuses that occur. The Guiding Principles suggest a 'smart mix' of measures – including both mandatory and voluntary approaches. These include introducing systematic 'due diligence' checks, whereby companies must identify, prevent, mitigate and account for how they address human rights issues throughout their supply chains and operations.

However, over the last decade, due diligence has largely been encouraged through voluntary guidance rather than made mandatory through binding legislation. Fundamentally, asking corporations to effectively police themselves has failed to systematically prevent abuses from happening.

Ireland's approach has also largely relied on promoting voluntary measures rather than progressing binding legislation. Ireland's [National Plan on Business and Human Rights](#) has focused on voluntary guidelines, and there is little evidence that this model of encouragement has had a significant impact. Recent research from Trinity College Dublin's Centre for Social Innovation showed that of the top 60 companies in Ireland, as well as Ireland's ten-largest state-owned enterprises, 34 percent scored zero on embedding respect for human rights in their operations.

Furthermore, Ireland and the EU have failed to support a UN [legally binding treaty](#) to regulate the activities of transnational corporations and other business enterprises¹. Negotiations for a UN Treaty on Business and Human Rights have been ongoing for the last seven years. However, we are extremely disappointed with the EU's lack of meaningful engagement to progress the development of this important Treaty, along with Ireland's lack of pro-active support in favour of a UN Treaty.

Our view is that Ireland's approach – relying predominantly on a voluntary measures - is out of step with developments across Europe in recent years. There is a clear shift now towards firmer binding legal requirements. France, Germany, and Norway have all introduced legislation for mandatory human rights due diligence across supply chains. The European Commission is also developing a similar, EU-wide legislative proposal, due to be announced early next year. Just in the last week, the Dutch Foreign Minister has indicated that the Netherlands will proceed with introducing human rights due diligence legislation.

We would like to see Ireland using its influence at the EU to push for a strong and robust EU due diligence directive, and for the EU to secure a mandate to negotiate for a strong binding UN Treaty at the 2022 negotiations session. Given that the EU directive would mandate Ireland to introduce

¹ In 2014 the United Nations Human Rights Council adopted the historic Resolution 26/9, to elaborate an internationally legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

national level legislation, we believe that developing strong Irish legislation should be the priority – with the groundwork starting now.

As such, we would encourage the committee to strongly support the initiation of Irish legislation, and we have set out our coalition’s proposals for the key elements of such legislation in our [‘Make it Your Business’ report](#), which is underpinned by the work of Dr Rachel Widdis from Trinity College.

Such legislation should make it mandatory for companies to undertake human rights and environmental due diligence. Such a legal duty should cover all Irish business, all human rights and environmental standards, and include legal liability for companies throughout their global supply chains, whenever they cause or contribute to damages and ensure access to remedy for victims. It should include early, on-going, meaningful and safe engagement with affected communities, civil society and trade unions, and address reprisals against communities for defending human rights.

Given the work of initiating and developing such legislation cuts across the responsibilities of a number of departments, we respectfully request that the Chair of the Joint Committee on Foreign Affairs and Trade and Defence could write to the Minister for Foreign Affairs, the Minister for Justice and the Tánaiste as Minister for Enterprise, Trade and Employment, recommending they progress strong corporate accountability legislation in Ireland.

To recap, stronger regulation is needed nationally and internationally to provide a legal framework to ensure corporations do not violate human rights and cause environmental harm in their operations. In this regard, we recommend the following:

1. Ireland to adopt mandatory gender responsive human rights and environmental due diligence legislation to ensure businesses respect human rights across their activities and value chain²;
2. Ireland to support robust and gender responsive EU mandatory human rights and environmental due diligence legislation;
3. Ireland to support and contribute to the development of a UN binding treaty on business and human rights to regulate the activities of transnational corporations and other business enterprises, which will complement the UN Guiding Principles on Business and Human Rights, including through ensuring an EU mandate for negotiation in 2022.

As we recover from this pandemic, we need to change our approach and insist on legally binding regulation – we have to protect the land, environmental and indigenous defenders, who are already protecting all of us.

Thank you.

² As recommended in the 2019 National Plan on Business and Human Rights Baseline study commissioned by DFA and also in the Access to Remedy report commissioned by the National Plan Implementation Group.