

**Call for Input: UN Working Group on Business and Human Rights report on business in conflict and post-conflict contexts for the 2020 UN General Assembly**

**Submission of Ireland**

**April 2020**

**What policies, regulations and adjudication measures to protect against corporate-related human rights abuses and promote conflict-sensitive responsible business in conflict and post-conflict situations does your State have or should have in place?**

In November 2017 Ireland launched its *National Plan on Business and Human Rights 2017-2020* to give effect to the UN Guiding Principles on Business and Human Rights. The aim of the Plan is to promote responsible business practices at home and overseas by all Irish business enterprises, in line with Ireland's commitment to the promotion and protection of human rights globally. Throughout the drafting process of the Plan a number of actions relating to conflict affected areas were identified as being important for furthering the promotion of business and human rights, and are included in the list of additional and ongoing actions to be carried out across Government.

The Irish government supported the establishment of an EU-wide system for supply chain due diligence of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas. The Regulation will, with effect from 1 January 2021, require EU companies to ensure they import these materials and metals from responsible sources only. Of course, supply chain diligence is not limited to the extractive industries and areas of conflict.

A number of mechanisms that address responsible business conduct and respect for human rights are already in place. EU Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups requires large companies to publish reports on their policies, including with regard to environment protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery and diversity on company boards. The Directive has been transposed into Irish law through the European Union (Disclosure of non-financial and diversity information by certain large undertakings and groups) Regulations 2017, as amended by the European Union (Disclosure of non-financial and diversity information by certain large undertakings and groups) (Amendment) Regulations 2018.

The OECD Guidelines for Multinational Enterprises (MNEs) are recommendations addressed to multinational enterprises operating in or from adhering countries. The most recent Guidelines were adopted in 2011 by 48 adhering governments, including Ireland. All governments adhering to the Guidelines have a National Contact Point (NCP) to promote the OECD Guidelines, handle enquires and contribute to the resolution of issues that arise relating to the implementation of the OECD Guidelines in Specific Instances (a grievance mechanism). The Irish NCP sits within the Trade Policy Unit of the Department of Business, Enterprise and Innovation.

NCPs provide a platform for discussion and assistance to stakeholders to help find a resolution for issues arising from the alleged non-observance of the Guidelines. NCPs must do so in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines. Specific instances are not legal cases and NCPs are not judicial bodies. NCPs focus on problem solving- they offer good offices and facilitate access to consensual and non-adversarial procedures (conciliation or mediation). The Irish NCP rules of procedures for handling the Guidelines are available [here](#).

**What specific measures should business be required to take in conflict and post-conflict situations either by its home or host State, and what does “enhanced” human rights due diligence look like in practice? How does/ should the process to identify, prevent, mitigate and account for actual and potential impacts in conflict and post-conflict situations differ from “non-conflictual” contexts?**

In the context of weak and fragile conflict-affected states, the importance of the ‘do no harm’ principle in relation to conflict, society, economy and environment takes on additional significance. It is essential to ensure that business activities do not further fuel the drivers of conflict. It is also important to recognise marginalisation of particular groups, and that inequalities in the distribution of a country’s wealth and resources can drive conflict. Businesses can have both a potential positive or negative impact on this, and who is seen to benefit in society.

The challenge of weakened governance presents itself in conflict affected states. It is important to work with local structures to ensure international measures do not undermine or further weaken the state and the social contract by absolving the state of its responsibilities. In this regard, consultation with conflict affected countries is important in ensuring solutions, proposals and policies are led by those that have experience of conflict.

## *Due diligence*

The OECD Guidelines for Multinational Enterprises recommend that enterprises conduct due diligence in order to identify, prevent or mitigate and account for how actual and potential adverse impacts are addressed, including human rights.

The OECD Due Diligence Guidance for Responsible Business Conduct provides practical support to enterprises on the implementation of the OECD Guidelines for Multinational Enterprises by providing plain language explanations of its due diligence recommendations and associated provisions. Implementing these recommendations can help enterprises avoid and address adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance that may be associated with their operations, supply chains and other business relationships. The Guidance includes additional explanations, tips and illustrative examples of due diligence.

This Guidance also seeks to promote a common understanding among governments and stakeholders on due diligence for responsible business conduct. The UN Guiding Principles on Business and Human Rights as well as the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy also contain due diligence recommendations, and this Guidance can help enterprises implement them.

### **What does responsible and sustainable investment in post-conflict and reconstruction contexts look like in practical terms?**

States should encourage initiatives which promote gender and conflict sensitive business practices and economic development such as the empowerment of local stakeholders and dialogues and forums on business and human rights related issues.

In order to ensure that investment in post-conflict and reconstruction contexts are responsible and sustainable, it is necessary to develop and implement an investment framework that targets essential sectors and market development, while also promoting sustainable and inclusive economic growth.

Increased trust between communities, the government and private sector stakeholders is key to facilitating respect for human rights in a sustained, systemic and resilient fashion. An encouraging practice in this regard is the provision of thematic training for local communities to enable them to use their skills to put in place solutions to end human rights violations in the business sphere. This has been achieved in the Democratic Republic of the Congo,

Burundi and Rwanda by training women traders working across borders. Ireland has provided funding for an NGO which encouraged business forums, offering room for dialogue between the state, community and mining companies. In one instance this offered room to air and settle grievances over economic and environmental concerns. In other places, knowledge and capacity building in different stakeholder groups raised awareness among communities affected by private sector companies' operations.

In a post-conflict or reconstruction context there is a risk that an inflow of investment to aid recovery will widen the gap between different socio-economic groups. The investment framework should set out the processes, conditions and defined objective/targets required to ensure that investments facilitate vulnerable and excluded groups having access to finance, technical advice, ICT infrastructure and other such resources. The framework should also provide guidance on how to ensure that the investments are both economically and environmentally sustainable. The use of such a framework must include an initial assessment of the political and economic factors at play in the country/ region to understand the dynamic and potential obstacles to promoting, and investing in, inclusive and sustainable economic growth.

### **What should recipient and donor States require from relevant international institutions?**

Recipient and donor states should require from relevant international institutions guidance on best practice to ensure that investments are targeting both the most essential/ fundamental sectors within an economy while also promoting inclusive economic growth. Further, coordination should be facilitated between donor states to avoid duplication of work and/or investment, and common approaches developed to promote strengthened governance, develop markets and enable business environments.

### **What is the role of business in transitional justice? What are the implications of the Guiding Principles in a transitional justice context?**

Whilst the transition from conflict to peace is the responsibility of the state, the inclusion of other actors, including corporate actors, can be an important tool in transitional justice processes.

Additionally, entrepreneurship which is supported by the private sector is seemingly an engine of peacebuilding in former conflict areas, with empowering local communities being an important element.

Taking the Colombian peace process as an example, development plans aimed to accelerate structural transformation of remote rural areas, particularly those affected by conflict, in mobilising private and public investments and improving public services at the local level. The programmes implemented were owned by local unions such as associations of conflict survivors and former combatants, which contributed positively to the implementation of the peace agreement. Participatory planning, local investment, and ownership of local unions and associations of former conflict survivors and former combatants of economic initiatives seem to be incredibly important pre-conditions to promote conflict-sensitive responsible business.

The interplay between economic regeneration and wider society regeneration cannot be ignored, and transformative change can only happen when economic change occurs within a human rights and social justice framework. Accordingly, it seems that a priority in post-conflict settings that any post-conflict economic change strategy holds human rights and social justice at its core.

Further, it is important that women peace builders at the local level be empowered, which in turn encourages grassroots entrepreneurship. Women peace builders also play a key role in monitoring, and advocating for, the respect of and promotion of human rights, including in business settings. For example, the Women's Peace and Humanitarian Fund (WPHF) funds small women's business as well as NGOs that educate them on their working rights, who in turn educate their respective communities. Empowering workers with knowledge of their rights enhances the chances of fewer violations of human rights and better accountability.

Corporate actors should also be involved in the process of truth-seeking, as they hold potential for revealing essential missing information on violations of human rights.

It is important that peace processes be underpinned by human rights. In the context of the peace process in Northern Ireland, the inclusion of human rights in the Good Friday Agreement and its implementation have been instrumental, as the Council of Europe Commissioner for Human Rights remarked:

“European and international human rights instruments are essential in ensuring workers' freedom of association, their right to collective bargaining, the prohibition of

discrimination, child and forced labour, and the protection of health and safety at work. In the context of conflict on the Island of Ireland it seems that the inclusion of the protection of human rights as predicated in the European Convention of Human Rights was a key principles underpinning the Good Friday Agreement. The support of the Council of Europe is consequently able to bring to Northern Ireland in its post-conflict reconstruction process reminds us of the importance of including human rights monitoring bodies in peace agreements as well as existing human rights instruments.”

Additionally, Mark Durkan, a key negotiator of the Good Friday Agreement noted that “partnerships and local delivery mechanisms helped ensure the successful implementation of the Good Friday Agreement”, reminding us of the importance of allowing for a period of growth for local people-to-people based initiatives, through local delivery mechanisms, before focusing on mainstreaming and scaling up. This is seemingly good practice in ensuring that human rights is a priority in any private sector partnership in peacebuilding contexts, allowing for any development efforts to reach the furthest behind first.