

Trócaire's submission to the Consultation on the creation of a Bill of Rights for Northern Ireland

5th February 2021

1. Introduction

Trócaire welcomes the opportunity to make a submission to the Consultation on the creation of a Bill of Rights for Northern Ireland.

Trócaire is a human rights and international development organisation that works in 20 countries around the world. It is gravely concerned about the widespread reports of corporate human rights abuses in the communities in which it works. In response, it is leading a Business and Human Rights Campaign calling for stronger regulation to hold companies to account for these human rights violations.

Issues of business and human rights impact a wide range of interdependent rights, including economic, social, cultural, civil and political rights. For example, the UN Economic and Social Council has “considered the growing impact of business activities on the enjoyment of specific Covenant rights relating to health, housing, food, water, social security, the right to work, the right to just and favourable conditions of work and the right to form and join trade unions.”¹ In addition, there are impacts on civil and political rights such as the rights of human rights defenders to freedom of expression and assembly, and the right to life.

This submission seeks to make the Committee aware of some of the human rights issues arising from corporate activity. The transnational nature of global business and the well-documented adverse human rights abuses throughout entire value chains demands that as Northern Ireland seeks to establish a global competitive economy,² it must also play its part in holding companies to account for environmental and human rights violations.

2. Adverse human rights abuses

The 21st century economy is dominated by large transnational corporations. These companies operate across borders and are often wealthier and more powerful than the states competing to host them. Communities seeking to protect their human rights from the actions of corporations, face growing levels of violence and intimidation.³

Indigenous communities are rarely consulted about these large-scale development projects for industries such as mining, logging and agri-businesses. Trócaire partners have reported violent evictions of people from their lands, pollution of lands, destruction of the environment, loss of livelihoods and deepening poverty, with a disproportionate impact on women and indigenous communities.⁴

For example, in the Polochic Valley region of Guatemala in March 2011, 769 families were violently evicted from their homes and land to make way for a private company's palm oil and sugar cane plantations. “There were many, many police, army and security contractors at the

eviction. I begged them not to burn my house and crops but they went ahead. They could have killed us but we ran away,” said Jose Cuc Cuz, recalling his family’s eviction. After living along the side of a road for 22 weeks with no support, the families moved back to their land. State police and private contractors again attacked them in the middle of the night. These families continue to live in constant fear of again being forcibly evicted from their homes and land.⁵

In Myanmar, 7,000 people are at risk of displacement due to the planned construction of a major dam on the Tanintharyi River by a transnational corporation. A further 22,000 people’s livelihoods are at risk, as well as the catastrophic environmental impact of destroying some of South East Asia’s largest remaining forest and biodiversity.⁶

Those who question and peacefully resist the destruction of their lands and communities face brutal consequences. States and corporations often combine to suppress peaceful opposition to large-scale developments. Killings, attacks, criminalisation and repression of human rights defenders are all on the rise. For example, in Honduras, eight community members from Guapinol have been arbitrarily detained since September 2019 and are facing years of imprisonment for trying to protect their river from a mining company in defence of the right to water.⁷

According to Global Witness, 2019 was the most dangerous year on record for land and environmental defenders - four people were murdered every week.⁸ Women activists, especially indigenous women, also experience threats of sexual violence and smear campaigns. The UN Deputy High Commissioner for Human Rights has referred to the data on disappearances, killings and assassinations as a ‘horror story’⁹

An example of this is the case of Berta Cáceras, the murdered Honduran human rights and environmental defender. Berta was an internationally renowned activist who was shot dead in 2016 for leading a long battle to stop the construction of hydroelectric dam on the Gualcarque River, which the indigenous Lenca people consider sacred. The community was not consulted about the development which is in contravention of the rights of indigenous peoples outlined in the ILO Convention 169.¹⁰ The project had received millions of dollars in funding from the Dutch bank FMO and the Finnish Fund for Industrial Cooperation. Berta’s family and community continue to defend their land from corporate power and to campaign to bring the masterminds behind Berta’s murder to justice.¹¹ In February 2020, Berta’s daughter, Bertita, visited Parliament Buildings and met with several Ministers and MLAs to bring international attention to the case.

3. COVID-19

The COVID-19 pandemic has exacerbated issues of business and human rights, including exposing the unsustainable nature of global supply chains and practices, for example in the garment industry. In addition, Trócaire partners are reporting that since many communities cannot access their fields and forests during restrictions, there have been increased land grabs, illegal logging and mining activities. Some countries are taking advantage of the lockdown to violate human rights and crack down on activists, including increased threats and attacks.¹² There are concerns that as governments attempt to restart their economies there will be the potential for human rights and environmental standards to erode even further. Land grabs and corporate exploitation will be on the rise.¹³

4. The Corporate Accountability Challenge

Trócaire supports communities on the frontline, including by negotiating with local government to obtain land title and providing training so parents can protect themselves and their children from intimidation and violence. However, this is a global problem and it requires a systemic solution.

Despite the adverse human rights impacts that corporations can have on communities, there is a major gap in the regulation of corporate activities by states and in access to remedy for victims of human rights violations. Corporations wield major economic and political power and often align with the interests of states or powerful political decision-makers. Transnational corporations, in particular, use complex legal structures to avoid accountability. Victims struggle to access remedy in the host state (where the violation occurred) and in the corporation's home state.¹⁴

A European study in February 2019 reported cases of gross human rights abuses by EU companies (including UK companies) in countries outside the EU. Cases included murder and complicity to murder, war crimes and crimes against humanity, but also issues related to health, environmental justice and several labour rights related issues. In this study 2 out of the 35 cases concerning allegations of human rights abuses led to a successful outcome for the claimants.¹⁵

In essence, the global nature of business has not been met with global regulation and legally binding measures. The UN Guiding Principles on Business and Human Rights (UNGPs) have recommended a smart mix of regulatory measures;¹⁶ however, regulation has largely developed in the form of voluntary guidance and implementation of these voluntary, soft law guidelines has been marginal.

The 2019 Corporate Human Rights Benchmark, which assesses 200 of the largest publicly traded companies in the world on a set of human rights indicators (agricultural products, apparel, extractives and ICT manufacturing) reveals poor levels of implementation of the UNGPs. The Chair notes that governments and investors should be alarmed by the fact that “one quarter of companies score less than 10% and a full half of companies fail to meet any of the five basic criteria for human rights due diligence.”¹⁷ The 2020 EU study on due diligence in the supply chain finds that only one in three businesses in the EU are currently undertaking due diligence on human rights and environmental impacts.¹⁸

5. Stronger Regulation

Businesses can play a central role in protecting human rights and the environment. However, as the examples illustrate above, some businesses continue to trample on people and the planet in the pursuit of profit.

Across these islands, several companies have been linked to human rights abuses abroad, including state companies. For example, the Cerrejon mine in Northern Columbia is the largest opencast coal mine in Latin America and is owned by three mining companies listed on the London Stock Exchange – Anglo American, BHP and Glencore. The mine has a long and well-documented history of serious human rights abuses. In 2019, the UN Committee on the

Elimination of Racial Discrimination highlighted that Ireland's Electricity Supply Board (ESB) has purchased coal from the Cerrejon mine. Amongst its recommendations, the Committee urged Ireland to guarantee that the victims have access to effective remedies and compensation in Ireland.¹⁹

Stronger national and international regulation is needed to provide a legal framework to ensure companies do not violate human rights throughout their operations. Trócaire has joined networks and alliances, including the UK Corporate Accountability Coalition (CORE), the Irish Coalition on Business and Human Rights and European Coalition for Corporate Justice, to campaign for the UK, Ireland and the European Union to:

- Constructively engage in the process at the United Nations to create an international binding treaty on Business and Human Rights. A strong treaty should close the global governance gap and create a level playing field for all businesses with respect to human rights. It should complement and build on the UN Guiding Principles on Business and Human Rights.
- Bring forward legislation domestically to require companies to adopt mandatory human rights and environmental due diligence to ensure businesses respect human rights across their activities and value chain. A number of European countries have introduced similar laws, e.g. France's Corporate Duty of Vigilance Law.

The European Union has committed to introducing mandatory human rights and environmental due diligence legislation, which is expected to apply directly to all companies operating in the single market, including UK companies. The European Commission has launched public consultation on the legislation.²⁰

The UK and Irish governments have committed to implement their respective National Action Plans on Business and Human Rights. The Irish government has committed in its Programme for Government to review "whether there is a need for greater emphasis on mandatory due diligence" in relation to business and human rights.²¹ In 2017, the UK's Joint Committee on Human Rights made a recommendation for such a law.²²

Human rights are also central to delivering on governments' commitments to the Sustainable Development Goals and the Paris Agreement, and businesses have a role to play in achieving targets.²³ However, the urgent action required must prioritise human rights and accountability to ensure no one is left behind.

6. Recommendations – Northern Ireland's role

Northern Ireland companies conduct business in the global marketplace. Northern Ireland consumers purchase products with global footprints. During Trócaire's awareness-raising work, the public routinely express their shock at these injustices and express solidarity with the victims.

Ensuring companies respect human rights and the environment must be central to the region's recovery from the COVID-19 pandemic and the NI Executive's commitment in New Decade, New Approach to "invest for the future... harness opportunities and drive sustainable productivity".²⁴

There is a growing momentum across Europe on the need for new laws to address corporate human rights violations. Surveys show that most businesses support this legislation due to its anticipated benefits, including legal certainty and a level playing field.²⁵ Northern Ireland businesses could be impacted by these legislative developments, for example, they could apply to all GB and NI companies that trade in the EU.

Trócaire urges the Committee to consider how stronger, legally binding corporate regulation could be included in a NI Bill of Rights. This should complement and build on the UN Guiding Principles on Business and Human Rights and cover private companies and public bodies. It should articulate the primacy of human rights over trade and investment, be gender responsive, cover environmental and human rights due diligence throughout the whole supply chain, ensure companies consult potentially affected communities and enable victims to access justice. The urgent development of a robust Northern Ireland Action Plan on Business and Human Rights which covers the points above would be an important step in this process towards legally binding regulation.

Trócaire also urges the Committee to commit to actively support the development of an ambitious, effective and binding UN treaty on business and human rights to regulate the activities of transnational corporations and other business enterprises. This treaty must include strong perspectives on gender and human rights defenders.

The COVID-19 pandemic has illustrated our world's interconnectedness and interdependence. Northern Ireland has the opportunity to do its part and be at the forefront of developments which seek to protect the human rights and the environment of some of the most marginalised communities in our world.

7. Contact information

For further information contact Jeannie McCann, Campaigns Officer (NI):
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8. Resources

- 1) [Making A Killing](#), Trócaire's policy report which was first published in March 2019
- 2) [Women Taking The Lead: Defending Human Rights and the Environment](#), Trócaire's policy report which was first published in March 2020
- 3) [Towards a Transformative Treaty on Business and Human Rights](#), The Irish Coalition on Business and Human Rights policy report which was first published in October 2020
- 4) [Defending Tomorrow](#), Global Witness report which was first published in July 2020

9. Notes

Trócaire was established in 1973 as the overseas development agency of the Catholic Church in Ireland. Its dual mandate is to support the most vulnerable people in the developing world, while also raising awareness of injustice and global poverty in Ireland. It works in partnership with communities in over 20 countries and, last year, brought support and relief to 2.5 million people. Trócaire works to tackle the root causes of poverty, not just the symptoms.

¹Committee on Economic, Social and Cultural Rights - General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW1a0Szab0oXTdImnsJZVZQclMOuuG4TpS9jwIhCJcXiuZ1yrkMD/Sj8YF%2BSXo4mYx7Y/3L3zvM2zSubw6ujInCawQrJx3hIK8Odk6DUwG3Y> {05.02.21}

² NI Draft Programme for Government Outcomes:
<https://www.northernireland.gov.uk/sites/default/files/consultations/newnigov/pfg-draft-outcomes-framework-consultation.pdf>, p22 {05.02.21}

³ Making a Killing, p4

⁴ Making a Killing p4

⁵ Making a Killing, p18

⁶ Women Taking the Lead, p22

⁷ Members of the European Parliament call to free Guapinol Defenders: <https://eulatnetwork.org/members-of-the-european-parliament-call-to-free-guapinol-rights-defenders/> {05.02.21}

⁸ Defending Tomorrow, p6

⁹ Opening of the 4th Session of the OEIGWG in charge of the elaboration of an international legally binding instrument on transnational corporations and other business enterprises, with respect to human rights: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session4/OpeningStatementDHC.pdf> ? {05.02.21}

¹⁰ ILO Convention 169:
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312314 {05.02.21}

¹¹ Making a Killing, p25

¹² Submission by the International Land Coalition to OHCHR
<https://www.landcoalition.org/en/resources/protecting-human-rights-during-and-after-covid-19/> {05.02.21}

¹³ Towards a Transformative Treaty on Business and Human Rights, p3

¹⁴ Making a Killing, p4

¹⁵ Access to legal remedies for victims of corporate human rights abuses in third countries:
[https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU\(2019\)603475_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU(2019)603475_EN.pdf) {05.02.21}

¹⁶ UN Guiding Principles on Business and Human Rights
https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf {05.02.21}

¹⁷ The 2019 Corporate Human Rights Benchmark <https://www.corporatebenchmark.org/> {05.02.21}

¹⁸ European Commission Press Release (24/02/2020) “Commission study shows the need for EU-level legislation on due diligence throughout the supply chain on human rights and environmental impacts”: https://ec.europa.eu/commission/presscorner/detail/en/MEX_20_323 {05.02.21}

¹⁹ Towards a Transformative Treaty on Business and Human Rights, p4 & UN CERD recommendations: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_COC_IRL_40806_E.pdf (point 47 & 48) {05.02.21}

²⁰ EU Commission consultation to EU regulatory framework on company law and corporate governance: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance> {05.02.21}

²¹ Irish Government’s Programme for Government: <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/> (p 114) {05.02.21}

²² Human Rights and Business 2017: Promoting responsibility and ensuring accountability: <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/44311.htm> (point 24) {05.02.21}

²³ Making a Killing, p8 & 20

²⁴ New Decade, New Approach, p8

²⁵ Two surveys showing the attitudes of businesses: UK <https://www.biicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms> (p5) and EU https://ec.europa.eu/commission/presscorner/detail/en/MEX_20_323 {05.02.21}