

11.11.2019



**Presentation to the Joint Committee on Foreign Affairs and Trade and Defence
Thursday 14 November 2019**

Siobhan Curran, Policy and Advocacy Advisor on Human Rights and Democratic Space, Trócaire.

Good morning,

Thank you to the Chair and the Committee for the invitation and opportunity to speak today. I look forward to the discussion and to answering any questions that you may have. My name is Siobhan Curran and I am the Policy and Advocacy Advisor on Human Rights and Democratic Space with Trócaire, focusing on the area of business and human rights. I would like to take this opportunity to highlight some of the human rights issues arising in the context of corporate activities and outline our recommendations of mandatory human rights and environmental due diligence and support for a UN Treaty to regulate transnational corporations and other business enterprises.

Trócaire is campaigning on business and human rights in response to widespread reports of corporate human rights abuses in the communities in which we work, including the displacement of communities, violent evictions, pollution of land and destruction of livelihoods. Women and indigenous communities, who often have less formal rights to land, are particularly vulnerable to eviction and dispossession to make way for large-scale development projects.¹ In addition, women are less likely to be consulted about corporate developments and experience additional barriers in seeking access to effective remedies for business-related human rights abuses.² Our campaign has focused on corporate activities in Honduras, Guatemala, Kenya, Zimbabwe, Myanmar and Palestine.

For example, in Myanmar, 7000 people risk being displaced due to the planned construction of dams on the Tanintharyi River, with a further 22,000 peoples' livelihoods at risk, along with the catastrophic environmental impacts of destroying some of South East Asia's largest remaining intact forest and biodiversity.³ The communities have not been consulted and yet their lives will be irreversibly impacted if the transnational corporations proceed with these developments.

As we sit here 7 community members in Guapinol, in Honduras, are facing years of jail for trying to protect their river from a mining company. These human rights activists are from a small town in Honduras, who are resisting the mine because the initial work of the mining company dried up the river that they depend on for water. The town has now been heavily militarised and community members criminalised. In another part of Honduras, the Tolupanes community are facing relentless threats and attacks for protecting their forest from logging companies. In February 2019, Salomóm Matute and his son Juan Samael Matute were murdered. This community has lost over 100 human rights defenders in the protection of their lands.

Those who question and resist the destruction of their lands and communities are facing brutal consequences - including killings, attacks, criminalisation and repression. The UN Deputy High Commissioner for Human Rights has referred to the data on disappearances, killings and assassinations as a horror story.⁴ Since 2015, more than 2,000 attacks on activists working on human rights issues related to business have been documented by the Business and Human Rights Resource

¹ The Global Initiative for Economic, Social and Cultural Rights (2014) 'Using CEDAW to Secure Women's Land and Property Rights: A Practical Guide.'

² See Working Group on the issue of human rights and transnational corporations and other business enterprises (2019) 'Gender dimensions of the Guiding Principles on Business and Human Rights.'

³ Candle Light, Southern Youth & Tarkapaw Youth Group (2019) 'Blocking a Bloodline.'

⁴ <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session4/OpeningStatementDHC.pdf>

Centre.⁵ In 2018, 25% of attacks were related to agribusiness and agriculture. 22% were related to mining and 13% related to renewables (including dams).⁶ Many of these defenders are indigenous defenders who are defending our environment and their protection benefits us all.

UN Treaty on Business and Human Rights

Despite the adverse human rights impacts that corporations can have in 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.** Transnational corporations, in particular, use complex legal structures to avoid accountability. The transnational or global nature of business has not been met with global regulation and binding measures – while the UN Guiding Principles have recommended a smart mix of regulatory measures⁷, regulation has largely developed in the form of voluntary guidance and implementation of these voluntary, soft law guidelines has been marginal.

In recognition of this gap, the UN Inter-Governmental Working Group on Transnational Corporations and other Business Enterprises was established in 2014 to elaborate a legally binding treaty to regulate the activities of transnational corporations and other business enterprises. This could address the global governance gap and create a level playing field for all businesses with respect to human rights. This should complement and build on the UN Guiding Principles on Business and Human Rights. We welcome the Tánaiste's statement that Ireland will continue to work with our EU partners to look at how we might actively and constructively engage in the negotiation process. We also note that the revised draft of the legally binding instrument has now addressed the previous concerns of Ireland and the EU, including the scope of the instrument, which is now not limited to transnational corporations, and alignment with the UN Guiding Principles on Business and Human Rights. We recommend that Ireland supports the UN Treaty process and pushes for EU support and a negotiation mandate for the 6th session in October 2020.

Human Rights and Environmental Due Diligence Legislation

Trócaire welcomes Ireland's commitment to implementing the UN Guiding Principles on Business and Human Rights through the National Plan on Business and Human Rights 2017-2020. The Department of Foreign Affairs and Trade commissioned an independent "[baseline assessment of legislative and regulatory framework](#)" as part of a commitment to implement Ireland's National Plan on Business and Human Rights. The report notes that "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 ensure compliance by way of a mandatory regime." **It recommends that the state considers the adoption of mandatory human rights due diligence and that human rights due diligence ought to be considered as a minimum requirement for State companies.**

Trócaire supports the recommendations of the baseline assessment and we recommend mandatory human rights and environmental due diligence legislation. Such legislation would establish a corporate duty to respect human rights and the environment and require companies to identify, assess and act to prevent and address human rights abuses and environmental harm across their activities and value chain. It would also hold such companies legally accountable and provide access to justice for victims.

The standard has already been set out in detail in the UN Guiding Principles on Business & Human Rights, in the OECD Guidelines on Responsible Business Conduct as well as the sector specific and general OECD Due Diligence Guidance. The 2017 French Law on the Duty of Vigilance of Parent and Instructing Companies establishes a legally binding obligation for parent companies to identify and

⁵ See Business and Human Rights Resource Centre database - <https://www.business-humanrights.org/en/bizhrds>

⁶ See Business and Human Rights Resource Centre database - <https://www.business-humanrights.org/en/successful-globalization-is-only-possible-if-all-voices-are-heard-7-increase-in-attacks-on-defenders-damages-prospects-of-stable-equitable-future>

⁷ States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights.

11.11.2019

prevent adverse human rights and environmental impacts throughout the supply chain. Following France's adoption of a duty of vigilance law in 2017, other countries are adopting or discussing similar legislation. For example, Germany is in the process of drafting a law on mandatory human rights due diligence for German companies and their supply chains.

The European Commission department responsible for EU policy on justice, consumer rights and gender equality (DG Just) has initiated a study on the types of regularity options that could be pursued thus establishing the foundations for European human rights and environmental due diligence legislation. A recent report by the European Parliament maps legal cases against EU companies in third countries, and includes allegations of gross human rights abuses such as murder and complicity to murder, war crimes and crimes against humanity, thus highlighting the urgency of action to prevent corporate human rights abuses and provide access to remedy.⁸ We recommend that Ireland supports the development of EU human rights and environmental due diligence legislation.

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

1. Ireland to adopt mandatory human rights and environmental due diligence legislation to ensure businesses respect human rights across their activities and value chain;
2. Ireland to support 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.

We welcome the Tánaiste's statement that officials in the Department of Foreign Affairs and Trade are in the process of reviewing the draft UN Treaty. We further request that:

- The Department of Foreign Affairs and Trade to develop and make public a position on the UN legally binding Treaty on business and human rights (in areas of domestic competency);
- Ireland to hold a national consultation on the UN Treaty (as per the recommendation by the Chair of UN IGWG VII, A (d) in A/HRC/43/XX);
- Ireland to actively push for an EU negotiation mandate for the UN Treaty Negotiations;
- Ireland to participate and intervene in the IGWG consultations and negotiations in Geneva in October 2020.

We respectfully request that the Chair of the Joint Committee on Foreign Affairs and Trade and Defence could write to the Tánaiste to communicate the above recommendations. We would also like to request that the Committee continue to engage with stakeholders involved in the implementation of business and human rights in Ireland in order to keep this important issue on the agenda.

Thank you.

⁸ European Parliament (2019) 'Access to legal remedies for victims of corporate human rights abuses in third countries.'