



Mr. Colin Wrafter
Director, Human Rights Unit
Department of Foreign Affairs and Trade
By email: businessshr@dfa.ie

Re: Ireland's National Action Plan - submission by ACCESS Facility

The Hague, the Netherlands, 26 February 2015

Dear Mr. Wrafter,

It is with great interest that we read the announcement regarding the development of a National Action Plan by Ireland to promote and incentivize responsible business conduct consistent with the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines on Multinational Enterprises. We fully support the initiative to invite input from stakeholders and the public on both the process and content of the National Action Plan.

I write to you on behalf of ACCESS Facility ('ACCESS'), a global nonprofit organization that - inspired by the UNGPs - supports rights-compatible, interest-based problem solving to prevent and resolve conflicts between companies and communities.

ACCESS is designed to promote and strengthen mediation as a viable option when business and their stakeholders are engaged in disputes. ACCESS advocates for improved practice based on the best available evidence and insight, as a catalyst for better relationships among companies, communities, and governments. We empower companies, communities, and governments to engage in meaningful conversations and dialogue with the aim of finding sustainable solutions to company-community conflicts.

As to the implementation of the UNGPs, we have learned that governments are facing difficulties in finding ways to effectively implement the UNGPs third pillar on access to remedy, which requires States to ensure that those affected by business-related human rights abuses have access to effective remedy, an obligation that is part of the State's duty to protect. This seems to be especially true in relation to their duty to provide and enhance effective non-judicial mechanisms. With reference to (the commentaries to) UNGP 26 and 27, it is apparent that judicial mechanisms are at the core of the system of remedy for adverse business-related impact. Especially in situations that raise questions of criminal liability, non-judicial mechanisms are unlikely to be an adequate vehicle for justice. However, since judicial mechanisms are not always available, accessible, appropriate, nor necessarily always the required or desired venue of those impacted, non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms. Moreover, non-judicial remedy, and this is especially true for operational-level grievance mechanisms, has an important role to play in preventing company-community conflicts and in addressing early-stage grievances, before they escalate into human rights abuse. Non-judicial grievance mechanisms, especially those that

provide for mediation, can provide flexible remedies that address local needs and provide sustainable solutions for all parties involved.

Substantial opportunities exist to support mediation of company-community conflicts as an essential part of the remedy landscape. However, the role and added value of non-judicial remedy in preventing and resolving company-community conflicts is largely overlooked.

The process of developing a National Action Plan by Ireland offers a great opportunity to promote access to effective non-judicial remedy and to address some urgent gaps and challenges in this regard, especially:

- the lack of credible grievance mechanisms delivering rights-compatible, interest-based solutions;
- the lack of information available for businesses, communities and civil society organizations to make informed choices on grievance-handling options;
- the need to demystify non-judicial dispute resolution processes;
- the challenge to identify effective ‘third-party neutrals’ (facilitators or mediators); and
- the concern that the parties to disputes often lack the capacity to participate effectively in non-judicial and mediation processes.

ACCESS addresses these issues in its work program in order to contribute to enhancing access to effective non-judicial remedy in the field of business and human rights.

On behalf of ACCESS, I encourage the Irish government to include in its National Action Plan a paragraph on access to effective remedy and request special consideration for the need to promote mediation and dialogue between companies and communities and to enhance non-judicial remedy as a viable and integral part of the remedy system.

Mr. Wrafter, ACCESS Facility welcomes and supports the development of a National Action Plan by the government of Ireland and we thank you for the opportunity to contribute our thoughts to this important process. We remain available for any input on questions related to access to non-judicial remedy in the field of business and human rights.

Sincerely,



Serge Bronkhorst
Managing Director
ACCESS Facility