

Implementation Group for the Business and Human Rights National Plan

Minutes of Meeting

10 am – 12 pm, Tuesday, 8 December 2020

In attendance:

Ms. Breege O'Donoghue, Chairperson of Implementation Group

Mr. Gerry Cunningham (DFA), interim Chairperson of subgroup 1

Simon McKeever (IEA), Chairperson of subgroup 2

Ms. Mairead Keigher (Shift International)

Mr. Tomás Sercovich (Business in the Community)

Dr. Vittorio Bufacchi (UCC)

Dr. Martha O'Hagan Luff (TCD)

Dr. John Geary (UCD)

Mr. David Joyce (ICTU)

Mr. Matthew Sewell (Department of Justice)

Ms. Fiona Crowley (Amnesty International)

Ms. Siobhán Curran (Trócaire)

Mr. Sorley McCaughey (Christian Aid)

Mr. Fergal Grogan (OGP)

Ms. Eugenia McLaughlin (OGP)

Ms. Emma Jane Joyce (Irish Strategic Investment Fund)

Ms. Orlagh Collison (Department of Finance)

Ms. Celine McHugh (Department of Enterprise, Trade and Employment)

Dr. Mairead Moriarty (UL)

Dr. John Geary (UCD)

Ms. Meadhbh Costello (IBEC)

Ms. Emma Kerins (Chambers Ireland)

Ms. Rosie Valentine (Primark)

Mr. Michael McCarthy Flynn (Oxfam)

Mr. Niall Brady (DFA)

Mr. Brian Gray (ESB Group)

Secretariat Officials: Ms. Sarah Kavanagh, Mr. Ciaran Potter, Ms. Sarah Murphy

Guest speaker: Dr. Rachel Widdis, TCD

Apologies:

Dr. Shane D’Arcy (NUIG)

Ms. Jean O’Mahony (IHREC)

Ms. Ann Marie O’Brien (IEA)

Ms. Lydia Rogers (Enterprise Ireland)

1. Adoption of the Agenda; Minutes and Matters Arising

The Chairperson, Ms. Breege O’Donoghue, welcomed attendees to the meeting. She noted that both Oxfam (Michael McCarthy Flynn) and the Office of Government Procurement (represented at the meeting by Derek Flanagan, Fergal Grogan and Eugenia McLaughlin) had joined the Implementation Group and welcomed both.

The draft Agenda for the meeting was adopted and no matters were raised under any other business.

The Minutes of the previous meeting (on October 13th) were also adopted and there were no matters arising.

2. Update on Toolkit

Ms. Sarah Kavanagh of the HRU offered an update on the toolkit being considered by Subgroup 2.

Ms. Kavanagh referred to the briefing circulated in advance of the meeting. She outlined the work that had taken place to date through the sub-committee that she was a member of, along with Dr. Martha O’Hagan Luff, Mairéad Keigher, Tomás Sercovich and Simon McKeever. A text for a toolkit had been drafted. Discussions with the communications unit in DFA had taken place in regard to a new portal for the toolkit. Material for case-studies is awaited from a number of high profile businesses, including Tesco, Kerry Group, Unilever, Diageo and M&S. As things stand, it is hoped to have draft material from Tesco this week, from Kerry Group next week and from Unilever before the end of the year. HRU expect to hear from Diageo and M&S early in the new year. The material will come to HRU in the form of a template and then it will need to be reworked to ensure a consistent approach. HRU will continue to work with the small sub-committee and the goal is to complete it as soon as possible.

In response to a question from Ms. Martha O'Hagan Luff about including a semi-state among the companies listed, Ms. Kavanagh added that the purpose of the toolkit is to provide examples of best practice and that the recent benchmarking study by TCD had suggested that no semi-state company currently fell into that category. She said that the need to enhance engagement by semi-state companies with the UN Guiding Principles had been noted and that the issue would be raised at the next meeting of the Interdepartmental Committee on Human Rights, which was due to meet on 15th December.

3. Presentation by Mr. Ciarán Dolan, Mediators Institute of Ireland

The Chairperson introduced the item, setting out the its purpose as being in furtherance of the commitment in the National Plan that the Implementation Group will “Engage with business representative bodies to promote and strengthen mediation as a viable option when businesses and their stakeholders are engaged in disputes.”

She pointed to the major business representative bodies on the Implementation Group, including IBEC and the IEA, along with the largest businesses networking organization in the country, Chambers Ireland. The Chairperson said she hoped that the Implementation Group could have a good preliminary engagement with the Mediators Institute of Ireland and she thanked **Ciarán Dolan** for agreeing to speak with us this morning, introducing him to the group.

The Chairperson further referred to the documentation circulated in advance of the meeting, which referred to the presentation on the OECD National Contact Point, Andrew Colgan, at the June meeting, where he described his role as the NCP for the OECD Guidelines for Multinational Enterprises as involving offering to arrange mediation where acceptable to the parties concerned.

Mr. Ciarán Dolan of the Mediators Institute of Ireland (MII) addressed the group on mediation, describing it as a viable option for resolving disputes relating to business and human rights. He said:

Mediation has become a more popular method of resolving disputes in recent years. Legal practitioners are now statutorily required to inform clients about mediation. Mr Dolan pointed to the use of mediation in the Corrib gas line case. MII believes that mediation should be the first port of call

when resolving disputes, though it won't necessarily work in every situation. The purpose of MII itself is to promote the development of mediation and to regulate the practice of mediation. Mr Dolan noted that Alternative Dispute Resolution (ADR) associations are working with stakeholders to establish a forum for mediation and there are research projects ongoing on mediation standards and codes of practice.

The Mediation Act 2017 defines mediation as a "confidential, facilitative and voluntary process in which parties to a dispute, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve the dispute." Some key benefits to mediation include the fact that parties are in control of the decisions at all times, it is more likely to keep relationships intact and there are lower or no legal fees. Mr Dolan then highlighted the views of Mr Peter Cassells, a mediator who worked on the Corrib gas line case, of how mediation helped in that dispute. (Slides can be found at Annex 1)

Mr. Dolan said that MII would be happy to consider any feedback from the Implementation Group.

4. Draft Report on Access to Remedy- Dr. Rachel Widdis, TCD

The final draft of Dr. Widdis' report had been circulated to the Implementation Group in advance of the meeting, along with a compilation of the written feedback provided by members of the Implementation Group in regard to the previous draft.

Dr. Widdis provided an overview of the Report and outlined the various barriers victims may face when pursuing a remedy in Ireland for human rights violations by businesses (slides at Annex 2). She noted that a relatively small number of businesses had engaged with her research but noted complicating factors including Brexit, the pandemic and the fact that the policy area is relatively new. Of the small number of businesses that engaged, Dr. Widdis noted a wide awareness of UNGPs and ILO standards among businesses but less awareness around human rights defenders and the impact on women. She emphasised the need for capacity building for businesses. She also said that stakeholders recognised that voluntary measures are insufficient, given the legal, financial and reputational risks for businesses.

She said she'd had good engagement from a number of Departments, and others including a corporate law firm and an NGO.

In relation to her recommendations and conclusions, Dr. Widdis explained that:

- Recommendations are subject to appropriate evaluation and assessment of regulatory impact
- Recommendations are pending the Review of the Administration of Civil Justice
- Principle of proportionality, and full and prior consultation with stakeholders are necessary in relation to recommendations.
- To progress, it is crucial that all stakeholders are fully consulted, engaged, and dialogue is enhanced.
- The experience of rights holders should inform how remedies are provided
- In all steps, gender dimensions should be considered

Dr. Widdis then outlined a number of recommendations contained in the Report as follows:

- As judicial remedy is the most relevant form of redress in an Irish context, there is a need to act on legal, procedural and practical barriers outlined in the Report, including collective redress and third party funding (Review of Administration of Civil Justice may address this)
- Civil Legal Aid is not available for foreign direct litigation, non-residents will be further restricted by this
- Additional barriers to remedy for women, including language and geographic barriers should be addressed
- Criminal prosecution and civil remedies should be mutually reinforcing, criminal element is currently absent
- The role of non-judicial remedies like NCP and IHREC should be enhanced
- Consideration of human rights due diligence legislation should be commenced
- Ireland should engage with discussions on the Legally Binding Instrument to regulate transnational corporations and other business entities
- A centralised digital hub on business and human rights should be created, specifically aimed at stakeholders to facilitate capacity and resource building by providing a forum for dialogue and knowledge transfer
- A new National Plan should be framed around language of rights and obligations, as opposed to corporate social responsibility, contain more incentives for stakeholders to comply with it and should also have a programme of work that is clear
- The new Plan should include the recommendations within the Access to Remedy review
- Further analysis is needed on financial institutions and directors' duties

- Raise visibility of Implementation
- More engagement with SMEs is required

Q&A

The Chairperson thanked Dr. Widdis for her work and opened the floor to questions and comments.

David Joyce thanked Dr. Widdis for her report and made a suggestion in relation to a recommendation to “Request feedback from entities who have submitted instances to the **NCP** on improving the process”. He noted that it might be helpful to look at statements made at relevant OECD fora by representative groups such as TUAC – (**Trade Union** Advisory Committee to the Organisation for Economic Co-operation and Development), having regard to the small number submitted in Ireland.

Ms. Siobhán Curran thanked Dr. Widdis for capturing the feedback provided in the Report. She noted that it would be beneficial to hear **how Government Departments reacted** to the recommendations in the Report.

Sarah Kavanagh responded to say that it was intended to have a discussion about the Report at a multi-stakeholder forum on business and human rights in the Spring and that relevant government departments would be asked to participate. She noted that a number of Departments are represented on the Implementation Group and had received the Report and provided feedback on it.

Ms. Meadhbh Costello welcomed this approach, noting that the recommendations contained in the Report extend far beyond the remit of the Implementation Group.

Mr. Michael McCarthy Flynn asked what the **capacity of the Implementation Group is to accept recommendations and advise government on what to do**. Ms. Kavanagh noted that the completion of the access to remedy Report fulfils a commitment in National Plan and that its recommendations would feed into the next phase of policy development. She noted that a much wider consultative process would be required to draft a new iteration of the National Plan. She said that the core remit of the Implementation Group was to take forward the commitments in the National Plan and that the focus would now be on completing delivery of any outstanding commitments in the National Plan.

Mr Gerry Cunningham of the HRU added that Business and Human Rights is an agenda item for the forthcoming Inter-Departmental Committee on Human Rights.

Ms. Celine McHugh noted that the review of Access to Remedy was a very important report and she acknowledged the work undertaken. She said that capacity building is a huge issue and more emphasis is required on this issue – by both government and the business sector. She said this should be the focus now and that many of the recommendations in the review had huge implications that would require a lot of analysis. She said that **further analysis and development of the recommendations was required before any recommendations would be adopted.**

Ms. Orlagh Collison said that should the Department of Finance had any observations on the report, she would revert in writing.

The Chairperson **thanked Dr. Widdis** for her report and all her engagement with the Implementation Group. She said the Group looked forward to continuing to work with Dr. Widdis in the time ahead.

5. Proposed approach to 2021 work programme

Ms. Kavanagh referred to the briefing note provided to members in advance of the meeting, which set out a proposed approach to the multi-stakeholder forum on business and human rights in 2021. She pointed to the proposal in the briefing document to conduct an interim review of the implementation of the National Plan combined with a proposal to implement outstanding commitments to be considered at a multi-stakeholder forum. She noted that the Implementation Group is now two years into a three year mandate to progress implementation of the inaugural National Plan and that the Terms of Reference of Implementation Group require the Group to “review/update their work plan after 18 months and present this to the Business and Human Rights Forum as a basis for discussions.” The National Plan also commits to assessing the progress of implementation at a “multi-stakeholder forum to be held two years after adoption of the Plan”.

The briefing note circulated in advance of the meeting proposed the following approach to an interim review:

- Consult across government and prepare an initial assessment of the implementation to date of the commitments contained within the National Plan for consideration by the Implementation Group
- Prepare a proposed timeline for implementation of outstanding commitments in the National Plan (with responsibility allocated as appropriate) for consideration by the Implementation Group
- Convene a multi-stakeholder forum on business and human rights in Q1, 2021 that would consider the above but also facilitate discussion on key developments e.g. the EU's legislative proposals, etc.
- Use the opportunity of the Forum to highlight and promote initiatives such as the BHR Toolkit and the Access to Remedy Report.

Ms. Kavanagh proposed consultation with the Chairperson of the Implementation Group and the three subgroups in the new year, as well as consultation with individual members of the IG, in terms of fleshing out proposals.

She said discussions were still ongoing as to who which Department would lead on the development of a new plan, having regard to the changes that had taken place in departmental structures.

Q&A/Feedback

The Chairperson said she thought that the approach proposed was both reasonable and sensible and opened the floor for questions.

Mr. Simon McKeever said he had considered the proposal circulated [in advance of the meeting] and was happy to support this proposal.

Mr. Tomás Sercovich said that he felt a key **challenge was to promote awareness** of Business and Human Rights and the multi-stakeholder forum could bridge this problem. He said the forum would be critical to business engagement and would provide an opportunity to get deep into the challenges that businesses are facing. He added that the dissemination of the toolkit is critical. He further noted that the UK has **guidelines for public procurement** and it would be good to have something similar here. He added that the Group should take opportunities to learn from other governments, particularly when it comes to engaging with companies.

Mr. Fergal Grogan of the Office of Government Procurement responded to the point on procurement. The OGP's role is both as a central purchasing body along with a number of other State bodies and as the provider of policy guidance around public procurement. A Strategic Procurement Advisory Group has been established so that OGP can help departments to incorporate wider societal considerations into their procurement practices. A lot of work was taking place on strategic public procurement and that the Minister for Public Procurement was very interested in issues such as green public procurement, the human rights dimension etc. He said that OGP had met with Sarah Kavanagh to discuss the National Plan on Business and Human Rights and were pleased to have an opportunity to engage as part of the Implementation Group. He offered to engage offline with members or to brief a future meeting in relation to the progress of changes to procurement guidelines.

Mr. Sorley McCaughey said it was great to have OGP on board and participating in the Implementation Group.

Ms. Siobhán Curran thanked the HRU for outlining the **proposals for a multi-stakeholder forum**. She noted that it was good to see commitment to a new National Plan and that it could be useful to look at the **operation of the Implementation Group** and its processes when reviewing the current plan. Ms. Curran said it would be important if **human rights due diligence and the access to remedy review** could be embedded as part of the interim review. She also highlighted the importance in having a deadline for the review of the plan.

Ms. Fiona Crowley said that she agreed with the points that had been made by Ms. Curran.

Mr. Sorley McCaughey also endorsed the points made by Ms. Curran and stressed the desirability of **a review of the mechanisms of the Implementation group**. He said that he has made the point in the past that it seems like an anomaly to have civil society groups as part of an implementation group, which ultimately should be the role of government departments.

Mr. Cunningham said that he noted Ms. Curran's comments about the National Plan and added that the aim is for an interim review of the plan to be conducted in Q1 2021 with a wider review in the second half of the year, having regard to the developments taking place in the EU and UN. He further noted that discussions are still ongoing as to who will lead on the file.

Mr. Sercovich said it would be a good idea to **involve representatives of other EU Member State governments** in the forum, noting a successful engagement with a representative of the German government at a previous meeting.

Ms. Keigher agreed saying the Netherlands had a very interesting approach to sectoral agreements. She said the forum would be a good opportunity to engage with businesses who have developed good approaches to compliance with the UNGPs.

Ms. Kavanagh noted that a number of symposia on BHR had been held in recent months and the HRU had noted the participants in the various panels so had a good repository assembled in terms of identifying speakers.

6. Update on recent developments

The Chairperson referred to the briefing material on recent developments provided in advance of the meeting and thanked Ms. Kavanagh for assembling and circulating the information for members. She congratulated Dr. O'Hagan Luff and her colleagues at TCD Centre for Social Innovation for the publication of their new **benchmarking report on compliance with the UNGPs on BHR** which she said she'd read with great interest. She noted that the Report underlines the need for awareness building – and said that she believed the proposed multi-stakeholder forum can be very useful in this regard – and also for businesses to be aware of their responsibilities and to give effect to them. She said that all the members of the Implementation Group have a responsibility to spread the message about the UN Guiding Principles on Business and Human Rights.

The Chairperson said the date of the next meeting would be agreed in 2021 when the HRU had the opportunity to put together more detailed proposals for an interim review and multi-stakeholder forum and noted that work on the toolkit was continuing.

She said that she believed that 2021 would be an exciting year for this policy area and one where this Implementation Group can really come into its own.

She thanked all members of the group for their attendance, noting that four meetings had taken place in 2020 despite the challenges that dominated the year, and wished everyone a safe and happy Christmas.

Ends

Annex 1

Presentation by Mr. Ciarán Dolan of the Mediators Institute of Ireland


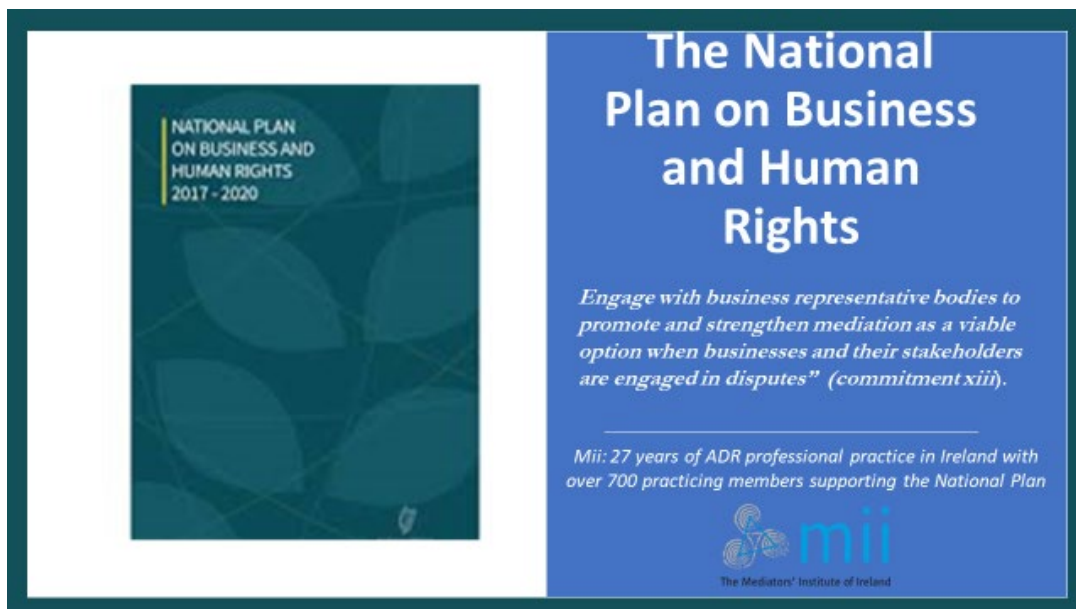


Business and Human Rights National Plan
Implementation Group

**The National Plan on Business and Human Rights
Mediation and Access to Remedy**

Ciaran Dolan BL
MII Executive Member


8 December 2020

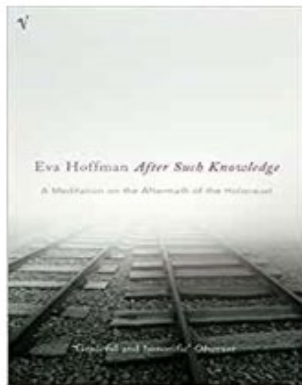


**The National
Plan on Business
and Human
Rights**

Engage with business representative bodies to promote and strengthen mediation as a viable option when businesses and their stakeholders are engaged in disputes” (commitment xiii).

Mii: 27 years of ADR professional practice in Ireland with over 700 practicing members supporting the National Plan





“Justice, after all, is the principle of mediation between people who are not necessarily conjoined by bonds of mutual affinity or shared histories, but who yet need to coexist together in the same society, or to negotiate their interests across national borders”.

Eva Hoffman,
AFTER SUCH KNOWLEDGE
MEMORY HISTORY AND THE LEGACY OF THE HOLOCAUST

HUMAN RIGHTS FOR ALL

Increased conflict in the area of sustainable development ... due to current global human demographic, consumption, and pollution patterns that place unprecedented demands on the regenerative capacity of remaining ecosystems and jeopardize the welfare of vulnerable groups.

Policy-makers, scholars, scientists, and are realizing that human rights, environmental protection, and economic development are linked and inter-dependent such that issues in any of these areas must be addressed holistically.

...conflicts between environmental protection and development initiatives often involve value conflicts between two or more development interests, one for environmental conservation, and the other for development to improve the quality of human environments.”

THE ROLE OF CITIZENS AND THE FUTURE OF INTERNATIONAL LAW: A PARADIGM FOR A CHANGING WORLD Avnita Lakhani



A sense of mission

- that Mediation should be the method of first choice in resolving disputes,
- that Mediation is a powerful tool for positive transformation,

that Mediation works where other forms of dispute resolution fail,

that a mediated resolution is a better resolution,

that Mediation improves peoples lives.



Mission Statement

Our mission is to lead the continued development and promotion of Mediation services in Ireland.

We are committed to raising standards through the continual development of best practice and regulating the best professional Mediators in Ireland.

We aim to see Mediation services readily available to all in Ireland regardless of location. We are dedicated to seeing Mediation used throughout Irish society to promote harmony and well-being.

We will establish Ireland as a world-leader in the provision of Mediation services.

Disputes about the human rights impacts of businesses around the world are increasingly being discussed in boardrooms, in law courts and in the media.

MII, CEDR and other ADR associations working with a number of stakeholders including leading law firms, companies and NGOs to establish a mediation facility to support the effective resolution of disputes in the business and human rights arena



MEDIATION ACT 2017

An Act to facilitate the settlement of disputes by mediation,

1. to specify the principles applicable to mediation,
2. to specify arrangements for mediation as an alternative to the institution of civil proceedings or to the continuation of civil proceedings that have been instituted;
3. to provide for codes of practice to which mediators may subscribe;
4. to provide for the recognition of a body as the Mediation Council of Ireland for the purposes of this Act
5. to provide, by means of a scheme, an opportunity for parties to family law proceedings or proceedings under section 67A(3) or 117 of the Succession Act 1965 to attend mediation information sessions;
6. to amend the Guardianship of Infants Act 1964 , the Judicial Separation and Family Law Reform Act 1989 and the Family Law (Divorce) Act 1996 ; and to provide for related matters.





•Mediation as defined in Mediation Act 2017

•Mediation means

- a confidential,
- facilitative and
- voluntary

process in which parties to a dispute,
with the assistance of a mediator,
attempt to reach a mutually acceptable
agreement to resolve the dispute.

GENERALLY ACCEPTED PRINCIPLES OF MEDIATION

Confidentiality:

The Mediator will not disclose any information about the parties, the content of or the outcome of the mediation to anyone not involved in the mediation, unless they have the express consent of all the parties to do so.

Impartiality and neutrality.

The Mediator will act in an impartial manner, treat all parties fairly and remain neutral as to the content and outcome of the process.

Self-Determination It is for the parties to determine the outcome of the mediation.

Voluntary Participation

Mediation is voluntary. Any party to the Mediation may withdraw from the mediation at any time.

A mediator may also withdraw from a mediation but must provide general reasons for doing so.

Respect: The parties will treat each other and the process with respect.

Benefits /Advantages of Mediation

1. The parties are in control at all times of the decisions as opposed to a solution being imposed.
2. Mediation is more likely to facilitate the continuation of personal/commercial/ community positive relationships.
3. Mediation is confidential, thereby avoiding reputational damage to a business or other entities and individuals.
4. As it is less formal, it can provide a relative quick solution.
5. No or lower legal fees are accrued and the costs associated with Court and possible Appeals processes are avoided.
6. It is without prejudice - where an agreement is not reached or a party withdraws from the process, other dispute resolution processes can subsequently be pursued.
7. Limitation and Prescription Periods-time at mediation disregarded.

Cost-benefit analysis: Costs of Dispute resolution

The relative cost of mediation compared to legal proceedings vary greatly depending upon the complexity of the case. However, the following may be considered.

<u>Mediation Costs</u>	<u>Litigation Costs</u>
Initial legal /expert advice	Initial legal/expert advice
Mediator-fee for preparatory	Solicitors' fees
Mediator-expenses	Solicitors' admin. costs
Mediator-preparation of report	Barrister's Senior/Junior Council) brief fee
Staff cost preparation/sessions	Time of staff members in preparation of papers, meetings Court plus Barrister(s)'s fees. Court fees-filing of summons, affidavits, motions, appearances, notices, discovery expenses.
Fees-expert assistance	Expert witnesses' fees
Cost of settlement agreement	Costs associated with delays of proceedings. Cost of settlement agreement. Other party's costs (loss of case). Cost of Appeals.



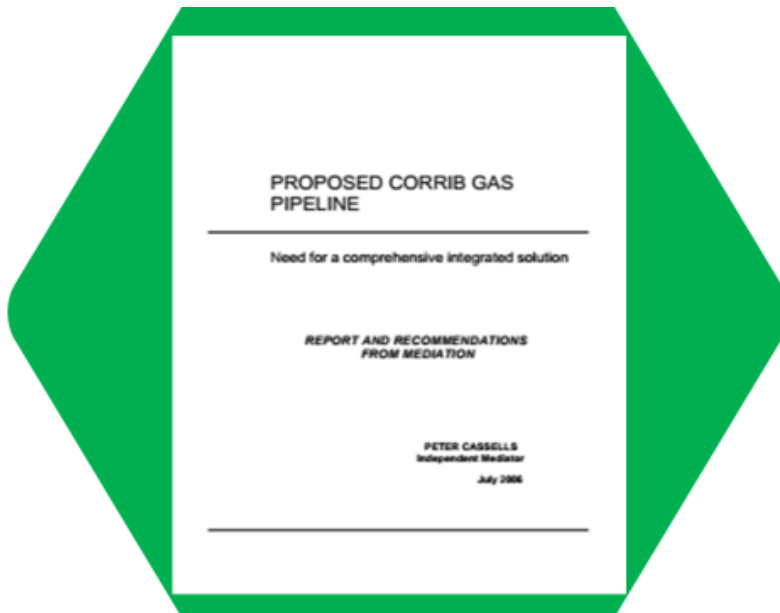
State-based non-judicial grievance mechanisms

27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

Non-State-based grievance mechanisms

28. States should consider ways to facilitate access to effective non-State based grievance mechanisms dealing with business-related human rights harms

Corrib Gas
20 years of
protests and
controversy





Following completed of consultations with the local community, he proposed to the Rossport 5 and Shell that they now commence formal mediation. For those direct talks he drew up a **set of ground rules** under which: -

Absolute confidentiality would be maintained throughout mediation process; - There would be no reporting during the mediation process to third parties; -

All other parties would be excluded from this formal mediation; - The Department of Communications, Marine and Natural Resources would be a consultative partner as required and appropriate; -

The **methodologies for the mediation** (e.g direct v indirect talks, timelines, the drawing up of the agenda/issues for resolution) would be discussed and agreed with the parties.



"I spelled out that the overall task of the mediation would be to reconcile the two interests of bringing the gas in the Corrib Gasfield to market and ensuring safety.



For mediation to work **both of these objectives** must be achieved.



I proposed, therefore, that all development concepts and routes would be considered in the mediation and that the parties could set down core non-negotiable issues.



I also gave an assurance to the Rossport 5 and Shell that the mediation would be carried out properly, professionally and in an independent manner in accordance with the ground rules.



Following **acceptance** of these ground rules, the formal mediation between the parties recommenced".

“Improving consultations with the Local Community

During mediation, especially in the consultation phase, it was explained to me that initial enthusiasm for the project turned gradually to serious concerns especially when the Rossport 5 were put in prison.

The jailing of the Rossport 5 changed middle-ground opinion, prompted people to learn more about the project and heightened local safety and environmental concerns.

Andy Pyle, Chief Executive of Shell Ireland acknowledged that it did not listen enough to local concerns: “mistakes have been made”. We regret the part that we played in the jailing of the five men last summer.

The Corrib Gas partners are fully committed to the project, **however, we can only succeed in partnership with the local community.”**



Annex 2

Presentation by Dr. Rachel Widdis



Systemic Legal B.3, p 10-16; C.3, p 26-33	Remedies B.1-2, p 7-10	Additional barriers B.2.1, p 9-10 + in themes (p 40)
Procedural / Other C.5, p 33-35	<ul style="list-style-type: none">• Accessible• Affordable• Adequate• Timely	<ul style="list-style-type: none">• Women• Children• marginalised groups
Financial C.5.2, p 35-37		

Remedy - Comparative Scorecard

UK 		Ireland 
▶ Collective Actions	Yes (GLOs)	▶ Collective Actions No
▶ Third party funding	Yes (1967)	▶ Third party funding No
▶ Modern Slavery*	Yes 2015	▶ Modern Slavery No
▶ Failure to Prevent	Yes (2010)	▶ Failure to Prevent Yes (2018)
▶ FDL style litigation	Yes (1998)	▶ FDL style litigation No
▶ FDL litigation feasible	Yes	▶ FDL litigation feasible* No
▶ Judicial support	Yes	▶ Judicial Support ?
▶ EJ Recommendations	Yes	▶ EJ Recommendations No
▶ Constitution	No	▶ Constitution Yes

* extensively critiqued

* substantively Yes, practically No

Recommendations p 46-47

1. Reduce Legal, Procedural, Practical Barriers
2. Jurisdiction & Applicable Law
3. Enable Collective Redress
4. Funding Barriers
5. Practical Barriers

6. Additional Barriers
 - Centrality of rights holders
 - Gender lens - Gender transformative remedy - Gender responsive HRGEDD
 - Raise awareness and capacity

7. Criminal Law - assessment FTP

Recommendations p 47-49



8. Enhance Non-Judicial Remedies

9. Commence consideration of Human Rights & Environmental Due Diligence

10. UN Binding Treaty

11. Capacity and Resources

Central Digital BHR Hub

Central Training Hub

Dedicated SME portal

12. NAP 2021-2024

For Further Analysis

Annex 3 – material circulated to members with the Agenda in advance of the meeting

Membership of Implementation Group & Sub-Groups (3 Dec '20) as of 3 December 2020

Implementation Group for the National Plan on Business and Human Rights (established: December 2018)

	Sector	Representative	Organisation
1	Independent (formerly Business Sectors)	Breege O'Donoghue, Chairperson	N/A (formerly Primark)
2	Business Sector	Simon McKeever	Irish Exporters Association
3	Business Sector	Ann Marie O'Brien	Irish Exporters Association
4	Business Sector	Meadhbh Costello	IBEC
5	Business Sector	Emma Kerins	Chambers Ireland
6	Business Sector	Rosie Valentine	Primark
7	Civil Society Sector	Tomás Sercovich	Business in the Community
8	Civil Society Sector	Sorley McCaughey	Christian Aid
9	Civil Society Sector	Mairead Keigher	Shift International
10	Civil Society Sector	David Joyce	ICTU
11	Civil Society Sector	Fiona Crowley	Amnesty International)
12	Civil Society Sector	Siobhán Curran	Trócaire
13	Civil Society Sector	Orla O'Connor	NWCI
14	Civil Society Sector	Michael McCarthy Flynn	Oxfam
15	Civil Society Sector	Dr. John Geary	UCD
16	Civil Society Sector	Dr. Mairéad Moriarty	UL
17	Civil Society Sector	Dr. Martha O'Hagan Luff	TCD
18	Civil Society Sector	Dr. Shane Darcy	NUIG
19	Civil Society Sector	Dr. Vittorio Bufacchi	UCC
20	Government sector	Céline McHugh	Department of Enterprise, Trade and Employment
21	Government sector	Mary O'Callaghan/Matthew Sewell	Department of Justice
22	Government sector	Kieran Donoghue	IDA
23	Government sector	Orlagh Collison	Department of Finance
24	Government sector	Joe Gallagher	Department of the Environment, Climate and Communications
25	Government sector	Marina Louarn	Department of Social Protection, Rural and Community Development
26	Government sector	Emma Jane Joyce	Irish Strategic Investment Fund
27	Government sector	Lydia Rogers	Enterprise Ireland
28	Government sector	Brian Gray	ESB Group
29	Government sector	Gerry Cunningham	Department of Foreign Affairs
30	Government sector	Niall Brady	Department of Foreign Affairs
31	Government sector	Nominee TBC (either Derek Flanagan or Eugenia McLaughlin or Fergal Grogan)	Office of Government Procurement

32	Other	Jean O'Mahony	Irish Human Rights and Equality Commission
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Subgroup Memberships

SG1			SG2			SG3		
Niall Brady	DFA	On IG	Simon McKeever	IEA	On IG	Siobhan Curran	Tróciare	On IG
Emma Kerins	Chambers Ireland	On IG	Meadhbh Costello	IBEC	On IG	Jean O'Mahony	IHREC	Not on IG
Fiona Crowley	Amnesty	On IG	Orlagh Collison	D/Fin	On IG	Marina Louarn	DEASP	On IG
Paul Morrissey	D/HLGH	Not on IG	Deborah Dignam	DETE	Not on IG	Andrew Colgan	DETE	Not on IG
Kieran Donoghue	IDA		Lydia Rogers,	EI	On IG	Mary O'Callaghan / Matthew Sewell	DJE	On IG
Vittorio Bufacchi	UCC	On IG	Tomás Sercovich	Business in the Community	On IG	David Joyce	ICTU	On IG
Mairéad Moriarty	UL	On IG	Denise Roche	NWCI	Not on IG	John Geary	UCD	On IG
Anthony O'Grady	DCCAIE	Not on IG	Martha O'Hagan Luff	TCD	On IG	Shane Darcy	NUIG	On IG

Update on development of Toolkit

A small sub-committee (Simon McKeever, Mairéad Keigher, Martha O'Hagan Luff, Tomás Sercovich, Sarah Kavanagh) was established at the last meeting of the implementation group to develop content for the toolkit.

In the interim period:

- Content has been drafted summarising the following – UNGPs; National Plan on BHR; general principles re Human Rights; explanation of intersection of BHR; distinction between BHR and CSR; a list of resources developed by the UN, OECD, and a range of other organisations.
- A template for case studies has been developed.
- Companies have been identified using both the TCD BHR benchmark and the CHRB (see Appendix 5 for more information).
- Contact has been made with five companies which have agreed to provide/consider providing case studies for the toolkit.
- Discussions have taken place with the communications team in DFA about the creation and hosting of the portal.

Initially, it had been hoped to have content finalised in advance of the December meeting of the Implementation Group. However, the complex environment for business at the moment (impact of pandemic, looming Brexit, other end of year deadlines) means that it has taken a little longer than anticipated to make progress on case studies. However, the businesses contacted have been positive and helpful.

It is now proposed to finalise the toolkit content within the next 6-8 weeks and to convene subgroups 1 and 2 to consider the materials assembled in due course.

Engagement with Mediators Institute of Ireland

The National Plan on Business and Human Rights commits to: “Engage with business representative bodies to promote and strengthen mediation as a viable option when businesses and their stakeholders are engaged in disputes” (commitment xiii).

At the last meeting of the Implementation Group, subgroup 3 indicated that they had previously intended to invite a representative of the Mediators Institute of Ireland (MII) to a meeting of their group (as the commitment in the National Plan falls under ‘Access to Remedy’). However, on the basis that the commitment in the Plan is aimed at business representative bodies, it was agreed that the engagement happen instead at plenary where the business representative groups and a number of businesses are represented.

HRU contacted the MII and its Treasurer, [Ciarán Dolan](#), has agreed to speak at the meeting of the Implementation Group on 8 December.

Members may recall the presentation on the OECD National Contact Point, Andrew Colgan, at a meeting of the Implementation Group in June. Andrew has forwarded the following information regarding mediation in the context of the role of the NCP for the OECD Guidelines for Multinational Enterprises.

OECD Guidelines for Multinational Enterprises – Overview of Ireland National Contact Point Mediation Process

- *If the NCP accepts a complaint, it then offers “good offices” to the parties to resolve the complaint. That offer can include mediated solutions.*
- *The offer is voluntary for the parties, in line with the OECD Guidelines which are also voluntary for enterprises.*
- *The NCP would not provide the mediation directly. It would contract an independent mediator that has expertise in the subject of the complaint.*
- *If a mediated solution is not possible or successful, the NCP will make a final statement on the complaint which may or may not include recommendations for the parties.*
- *The NCP is available through the DETE website if anyone would like further information.*

Proposed approach to 2021 work programme

Two reviews need to be considered in the context of the operation of the inaugural National Plan on Business and Human Rights:

1. An interim review of the implementation of the National Plan combined with a proposal to implement outstanding commitments to be considered at a multi-stakeholder forum.
2. A large-scale review which would inform proposals to develop the second iteration of the National Plan.

In regard to interim review, the following points are relevant:

- The National Plan provides for the establishment of a 'Business and Human Rights implementation group', which will consist of representatives from government, the business community and civil society, and will meet twice a year to review the implementation of the National Plan over the first three years.
- The Implementation Group for the National Plan on Business and Human Rights is now two years into a three year mandate to progress implementation of the inaugural National Plan.
- The National Plan assigns responsibility to the implementation group for developing timeframes for delivering and reporting on each of the actions which have been assigned to it.
- The Terms of Reference of BHRNP Implementation Group require the Group to "review/update their work plan after 18 months and present this to the Business and Human Rights Forum as a basis for discussions."
- The National Plan on BHR commits to assessing the progress of implementation at a "multi-stakeholder forum to be held two years after adoption of the Plan".

In regard to the second proposed review, the following points are relevant:

- A proposed legislative initiative from the European Commission is expected in Q2, 2021
- The UN Working Group on human rights and transnational corporations and other business enterprises, has announced a new project: the UNGPs 10+ / Next Decade Business and Human Rights project, which involves a review of the implementation of the UNGPs to date and a look ahead to the future. In Q2 2021, the Working Group will publish a roadmap for "a decade of action on business and human rights".
- The EU Action Plan on Human Rights and Democracy has just been published and contains a suite of actions on Business and Human Rights that will be implemented during the lifetime

of the Plan, including the development of “a comprehensive EU framework for the implementation of the [UN] Guiding Principles”.

- Discussions are ongoing as to the allocation of responsibilities across Government following the structural and policy changes initiated by the formation of a new Government and the publication of a new Programme for Government.

Taking account of the foregoing, the DFA Human Rights Unit proposes to:

- Consult across government and prepare an initial assessment of the implementation to date of the commitments contained within the National Plan for consideration by the Implementation Group
- Prepare a proposed timeline for implementation of outstanding commitments in the National Plan (with responsibility allocated as appropriate) for consideration by the Implementation Group
- Convene a multi-stakeholder forum on business and human rights in Q1, 2021 that would consider the above but also facilitate discussion on key developments e.g. the EU’s legislative proposals, etc.
- Use the opportunity of the Forum to highlight and promote initiatives such as the BHR Toolkit and the Access to Remedy Report.

Ends

Updates on key developments since the last meeting of the Implementation Group

1. TCD report: “Benchmarking Business and Human Rights in Ireland”

Further to the briefing from Prof. Martha O’Hagan Luff at the last meeting of the Implementation Group, on 25 November, the Centre for Social Innovation at TCD launched its benchmarking report. The report is available [here](#) and the webinar which involved a panel discussion and an overview of the report can be watched [here](#). The report contains a series of recommendations. At the webinar, the need to build greater awareness of the obligations of business was highlighted by several speakers.

The Trinity research uses the Corporate Human Rights Benchmarking (CHRB) Core UNGP Indicator Assessment methodology. In the course of the UN Forum on Business and Human Rights, which took place from 16-18 November, the new 2020 CHRB Report was launched; the results are available [here](#).

2. EU Commission proposals on sustainable corporate governance

The EU Justice Commissioner has launched a [public consultation](#) on proposals to bring forward a Directive on Sustainable Corporate Governance. The public consultation is open until 8 February 2021.

The Commissioner has indicated that his proposals will involve changes to company law to oblige companies to put in place processes to identify and mitigate environmental, social and Human Rights risks across their value chains. Further, the proposal is to clarify Directors’ duties to require directors to take more into account the company’s long term interests.

The initiative is described on the Commission’s website as follows: “This initiative aims to improve the EU regulatory framework on company law and corporate governance. It would enable companies to focus on long-term sustainable value creation rather than short-term benefits. It aims to better align the interests of companies, their shareholders, managers, stakeholders and society. It would help companies to better manage sustainability-related matters in their own operations and value chains as regards social and human rights, climate change, environment, etc.”

3. EU Action Plan on Human Rights and Democracy 2020-2024

The [EU Action Plan on Human Rights and Democracy 2020-2024](#) was launched on 18 November 2020. It contains a suite of measures in the area of Business and Human Rights:

- Strengthen engagement in international fora and with partner countries to actively promote and support global efforts to implement the UN Guiding Principles on Business and Human Rights, including through fostering the development and implementation of national action plans in Member States and partner countries, advancing relevant due diligence standards and working on a comprehensive EU framework for the implementation of the Guiding Principles in order to enhance coordination and coherence of actions at EU level.
- Engage with the business sector on upholding and promoting human rights, anti-corruption measures and best practices on responsible business conduct, corporate social responsibility, due diligence, accountability and access to remedies in a participative manner (e.g. supply chains, zero tolerance for child labour).
- Support multi-stakeholder processes to develop, implement and strengthen standards on business and human rights and due diligence, and engage with development banks and international financial institutions. Promote regional projects, peer learning, exchanges of good practice and internationally recognised guidelines and mechanisms, such as those in the UN Guiding Principles on Business and Human Rights, OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.
- Support advocacy work and enabling spaces for business engagement with civil society and human rights defenders in decent job creation, sustainable development, and women's entrepreneurship and economic empowerment along the supply chain.
- Develop tools and training material on business and human rights, responsible business conduct, private/public-sector dialogue and due diligence to enable EU Delegations to step up their engagement on business and human rights.

4. Sixth session of the Open Ended Inter-Governmental Working Group on Transnational Corporations and other Business Enterprises

The [sixth session](#) of the Open Ended Inter-Governmental Working Group on Transnational Corporations and other Business Enterprises took place from 26th-30th October 2020. The European

Union delivered a [statement](#) on behalf of Member States and separately raised specific concerns in relation to the draft text on behalf of EUMS.

The EU statement welcomed some of the changes in the latest draft of the Legally Binding Instrument; highlighted further necessary changes; and outlined the many measures underway within the EU and across Member States to give greater protection to human rights in the context of business activities.

The Open-Ended Working Group indicated that following this session, a third draft Treaty will be prepared for discussion at the seventh session of the Working Group towards the end of 2021.

5. Ninth session of the UN Forum on Business and Human Rights

The [UN Working Group on the issue of human rights and transnational corporations and other business enterprises](#) is responsible for inter alia, promoting the effective and comprehensive dissemination and **implementation of the UNGPs and their “Protect, Respect and Remedy” Framework**. The Working Group hosted the 9th [UN Forum on Business and Human Rights](#) on 16-18 November 2020. This year over 4,000 participants from 140 countries, including Ireland, attended this virtual Forum which this year focussed on the prevention of human rights abuses in a Business and Human Rights context.

6. UNGPs10+ Project

[UNGPs 10+ / Next Decade Business and Human Rights Project](#): The Chairperson of the Working Group, Anita Ramasastry, has announced that in June 2021, on the tenth anniversary of the [unanimous endorsement](#) by the Human Rights Council of the UNGPs, she will publish a review which will “take stock of achievements to date, assess existing gaps and challenges, and, most importantly, *develop an ambitious vision and roadmap for implementing the UNGPs more widely and more broadly between now and 2030*”. A global consultation is under way.

Ends