

Buan-Mhisean na hÉireann chuig na Náisiún Aontaithe agus
Eagraíoch idirnáisúnta eile | An Ghinéiv
Permanent Mission of Ireland to the United Nations and
Other International Organisations | Geneva
Mission Permanente de l'Irlande auprès de l'Office des Nations Unies et
des autres organisations internationales | Genève



TPN/077/2022

The Permanent Mission of Ireland to the United Nations Office and other International Organisations in Geneva presents its compliments to the Secretary-General of the United Nations (High Commissioner for Human Rights) and refers to the communication AL IRL 2/2022.

With reference to the aforementioned communication, enclosed please find a response from Minister for Foreign Affairs, Mr Simon Coveney T.D.

The Permanent Mission of Ireland to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Secretary-General of the United Nations (High Commissioner for Human Rights) the assurances of its highest consideration.

Geneva, 19 September 2022





To: The Special Rapporteur on the situation of human rights defenders; the Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises; and the Special Rapporteur on the rights of indigenous peoples.

19 September 2022

Re: Joint Communication from Special Procedures; ref. AL IRL 2/2022

Dear Special Procedures Mandate Holders,

I wish to acknowledge your Joint Communication of 22 July 2022 (ref. AL IRL 2/2022). The Irish Government, through the Department of Foreign Affairs and the Embassy of Ireland in Colombia, is aware of the allegations outlined in this Joint Communication.

The Government became aware of these allegations further to a campaign by certain communities in the Cajibío region in Cauca, **Colombia**, in which they have been engaging in what they regard as land recuperation activities targeting property which is owned by the company Smurfit Kappa through its Colombian subsidiary Cartón de Colombia S. A.. The company, which holds legal title to these lands, regards these activities as land invasions.

Further to requests made to Ireland's Embassy in Bogotá from both the communities and the company seeking support for developing a dialogue process between the parties and with the Government, the Irish Government has been actively engaged on this issue. We have met with all parties to gain a deeper understanding of the circumstances and to support the development of an inclusive, meaningful dialogue through which the complex issues surrounding this situation may be resolved.

In addition to maintaining ongoing contact with the different parties, our actions have included contact with the previous and current Colombian Government, visiting the affected area, and actively engaging with the Universidad Javeriana, the offices of the Office of the UN High Commissioner for Human Rights, and the Delegation of the EU to Colombia on the issue, again with a view to promoting a dialogue process between all the parties.

The assessment of the Irish Government is that this a multi-layered, highly complex situation with various differing viewpoints, legal considerations, and other perspectives at play. We welcome the willingness of all parties to engage constructively in a dialogue process, as we believe that this is a critical step in addressing these issues. Our Embassy will continue to maintain communication with all sides with a view to supporting this. We hope that this will result in a long-term and inclusive solution which respects the rights of all concerned, and contributes to peace, human rights, and sustainable development in the Cauca region and more widely in Colombia.

Moreover, we welcome the Colombian Government's recent efforts to engage with all parties to promote regional and local dialogue, and their commitment to engage in land reforms which improve equality of land access in the country. Ireland recognises that addressing social, human rights, land-related and environmental issues is an essential component of Colombia's peace process and we remain committed to supporting Colombia in the comprehensive implementation of the 2016 Peace Agreement and its transition to a stable and peaceful post-conflict society.

Furthermore, Ireland also takes a very active role in supporting Human Rights Defenders (HRDs), indigenous communities and civil society space in Colombia, and engagement on these issues is a central component of our support to the Colombian peace process. The Irish Government is concerned about the threats to Mr Velasco Tumiña as set out in the Joint Communication, and we urge the Colombian authorities to take appropriate action to investigate these fully and to take the necessary measures to ensure his safety. Ireland has consistently raised our concerns about the threats to human rights defenders and social leaders in Colombia at a local and international level.

More broadly, we welcome the new Colombian Government's commitment to work towards a "total peace" in Colombia, and their emphasis on the importance of dialogue processes as part of efforts to address the challenges which face the country, including at a regional level. Ireland's engagement in supporting peace and development in Colombia takes place locally in Colombia, as well as through our engagement at the UN Security Council, and by means of funding and other supports channelled through the EU, the UN and various non-governmental organisations; Ireland has contributed over €17 million in support of the implementation of the Peace Agreement since 2017.

In relation to actions taken by the Irish Government more generally in the area of Business and Human Rights, please note that Ireland published a **National Action Plan (NAP) on Business and Human Rights** in 2017, one of the first States to do so following the publication of the UN Guiding Principles on Business and Human Rights (UNGPs).

A multi-stakeholder group comprising of business representative groups, civil society and government officials was constituted to oversee implementation of the NAP. This group also provided a forum to discuss and disseminate good practice and emerging developments. Under the NAP, the Implementation Group developed a **guidance document on Business and Human Rights for Irish companies**. The guidance was primarily devised by a sub-committee of the multi-stakeholder Implementation Group for the NAP. Members of the sub-committee were drawn from Shift, Business in the Community Ireland, the Trinity Centre for Social Innovation at Trinity College Dublin, the Irish Exporters Association and the Department of Foreign Affairs Human Rights Unit.

The guidance sets out what the UNGPs are asking of business enterprises. It provides references to a range of resources that will help businesses to implement those Guiding Principles. It includes four case studies from companies that have been independently identified as having policies and public commitments to respect human rights, to conduct human rights due diligence, to implement grievance mechanisms and to provide for remediation where necessary, consistent with their responsibilities under the UNGPs.

The guidance includes, inter alia, a section on Human Rights Defenders. It should be noted that Ireland is extremely proactive in the protection of **Human Rights Defenders**, working closely with the SR Lawlor, with leading NGOs, and with HRDs themselves to defend, promote and protect their vital work.

Following its publication, national business representative groups were asked to share and promote the guidance. In addition, the Department of Foreign Affairs partnered with the Trinity Centre for Social Innovation and others to host business-focussed webinars to explain and promote the guidance. Furthermore, line Government Departments communicated the guidance to semi-state companies under their aegis. This guidance is designed as a living document which will be updated over time.

In developing the guidance, careful account was taken of the findings of a **benchmarking** exercise which examined how a number of Irish companies are implementing the UNGPs based on publicly available information across three thematic areas: Governance and Policy Commitments; Embedding Respect and Human Rights Due Diligence; and Remedies and Grievance Mechanisms. “Benchmarking Business and Human Rights in Ireland”, which used the Corporate Human Rights Benchmark’s methodology, was published in 2020 by the Trinity Centre for Social Innovation. As Minister for Foreign Affairs, I was pleased to give a speech at the launch of the report, the findings of which informed the development of the guidance for businesses operating in Ireland referenced above. The relationships established have continued and a member of the Trinity Centre for Social Innovation is on our multi-stakeholder implementation group for our National Plan on Business and Human Rights, while the Government endeavours to work in close partnership with the Centre to promote best practice in relation to the UNGPs.

The multi-stakeholder implementation group for the inaugural National Action Plan on Business and Human Rights agreed a review of implementation in 2021 and this review was subsequently considered by the Cabinet.

Having regard to the centrality of human rights due diligence in the Business and Human Rights section of Ireland’s current Programme for Government and the evolving legislative landscape at EU level, the Department of Foreign Affairs and the Department of Enterprise, Trade and Employment are working together to consider how best to take forward **a new NAP**. As well as building on the work (including research) that has taken place under the inaugural NAP and forthcoming EU legislation on Corporate Sustainability Due Diligence, a new NAP will take account of *inter alia* the forthcoming EU Framework on Business and Human Rights, the revised OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and the expert guidance published by the UN Working Group on Business and Human Rights.

The Government is committed to promoting policy coherence across Departments on the area of Business and Human Rights. In addition to the multi-stakeholder group referenced above, Business and Human Rights is a standing agenda item at the whole of government Interdepartmental Committee on Human Rights. Moreover, this year, the Department of Foreign Affairs’ annual Civil Society Forum featured a discussion on human rights due diligence, with panellists drawn from the European External Action Service, Department of Enterprise, Trade and Employment, Ibec (the largest business representative group in the State) and the Chair of the Irish Coalition for Business and Human Rights.

Ireland is an Adhering State to the **OECD Guidelines for Multinational Enterprises** on Responsible Business Conduct. These Guidelines are Government-backed recommendations addressed to multinational enterprises that set out principles and standards to promote responsible business conduct in a global context. The Guidelines are broader than the UNGPs, which are encompassed in Chapter IV, and aim to promote positive contributions by enterprises to economic, environmental and social progress globally and cover a broad range of issues, including due diligence in the supply chain, disclosure, human rights, employment and industrial relations, environment, working to stop bribery, consumer interests, science and technology, competition and taxation.

As an Adhering State, Ireland has established a National Contact Point (NCP) with a remit to promote the OECD Guidelines and related due diligence guidance, to handle enquiries, and to **contribute to the resolution of complaints**, referred to as specific instances that allege non-observance of the Guidelines. The Ireland NCP provides a mediation and conciliation platform to help resolve complaints relating to non-observance of the OECD Guidelines. Any individual or organisation with an interest in the matter can submit a case to the Ireland NCP regarding a company operating in or from Ireland.

The Ireland NCP attends meetings of the multi-stakeholder implementation group for Ireland's National Plan on Business and Human Rights.

Furthermore, at EU level, Ireland broadly supports bilateral EU Free Trade Agreements (FTAs), including provisions and commitments relating to Trade and Sustainable Development (TSD). Recently, Ireland made a submission to the European Commission's Review of TSD advocating for a more assertive approach to TSD in our EU FTA negotiations and outlined the following priorities:

- The Irish Government has recently launched its new trade and investment strategy "Value for Ireland: Values for the World". The strategy emphasises trade as a powerful driver of prosperity, well-being and improved living standards while recognising in parallel that civil society demands an increased focus on environmental, social and governance dimensions of trade.
- Trade can contribute positively to solving global sustainability challenges and creating a better future for the next generations. Our FTAs can do more to promote the positive contribution that trade can make to the sustainability agenda, such as raising living standards and lifting people out of poverty; decent work and pay; promoting the circular economy; and increasing the availability of environmental goods, technologies and services. We also see greater scope for FTAs to support gender equality.
- FTAs should leverage and reinforce what has already been agreed internationally in multilateral fora such as the UN, ILO and OECD and not seek to override or side-step agreed international standards, lest they risk being diluted or undermined. The Commission could also explore ways to enhance cooperation and coordination with international organisations such as the ILO in the implementation of FTAs.
- Not all EU FTA partners are at the same level of development or have the same capacity to implement TSD provisions. We need to be particularly sensitive in our approach to negotiations with developing countries and tailor our approach accordingly, providing technical assistance and capacity building measures as required.
- Ireland advocates an incentive-based approach that could link additional tariff reductions to the fulfilment of TSD commitments. Ireland prioritises a cooperative approach to dispute settlement.

Ireland supported the appointment of the EU Chief Trade Enforcement Officer and the establishment of the EU Single Entry Point complaints mechanism which facilitates complaints for all EU stakeholders who find non-compliance with sustainability rules related to TSD in FTAs or the Generalised Scheme of Preferences. This provides a means to hold companies to account regarding the commitments made between parties in EU Free Trade Agreements. The EU has a trade agreement with Colombia and Peru, which includes a chapter on TSD. The agreement has been provisionally applied with Peru since 1 March 2013 and with Colombia since 1 August 2013.

Since 2017, under the rules of Directive 2014/95/EU on **non-financial reporting** implemented by Ireland, large companies and groups are required annually to publicly report on their policies in respect of environmental, social and governance (ESG) matters including respect for human rights. Where the company does not pursue policies in any one of the above areas, then its report must include a clear and reasoned explanation for not so doing. The information may be disclosed as part of the annual directors' report, a separate report that is filed in the Companies Registration Office with the undertaking's annual return or posted on the undertaking's website within 6 months of the financial year's end.

In June 2022, political agreement was reached between the EU Council and the European Parliament on the replacement of the existing directive with a new **Corporate Sustainability Reporting Directive**. It revises the existing rules on non-financial reporting and requires all large companies and large public interest entities (banks, insurance undertakings, listed entities) to report annually on ESG matters including human rights matters. EU subsidiaries and branches of non-EU companies with a turnover in the EU of greater than €150m will be required to publish an equivalent sustainability report. Companies will be required to report annually in their management/directors' report according to mandatory EU sustainability reporting standards. The information must be certified by an independent auditor or certifier. Member States will have 18 months from adoption of the Directive to transpose it, with a view to mandatory requirements commencing for financial years on or after:

- 1 January 2024 for companies and public interest entities in scope of the existing rules (greater than 500 employees);
- 1 January 2025 for other larger companies and public interest entities (greater than 250 employees); and
- 1 January 2026 for listed SMEs.

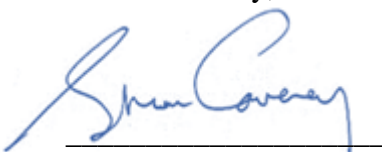
The final legal text and formal adoption of the proposal is awaited and planning for Ireland's transposition of the new rules is underway including stakeholder engagement.

On the 23rd of February 2022, the European Commission published its proposal for a **Corporate Sustainability Due Diligence Directive** (CSDD). The CSDD proposal sets out obligations for companies regarding adverse human rights and environmental impacts arising from their operations, their subsidiaries and their value chains. The proposal published by the Commission in February includes provision for Member States to impose fines in cases of non-compliance and proposes opportunities for legal action for damages for victims. The proposal is currently under negotiation. Ireland is closely engaged in this evolving legislative proposal and looks forward to transposing its final iteration in due course.

Finally, I wish to assure you of Ireland's commitment to Business and Human Rights and to upholding and promoting the rights of Human Rights Defenders.

We welcome and deeply value the engagement of the Special Rapporteurs and trust this response is helpful.

Yours sincerely,



Simon Coveney TD
Minister for Foreign Affairs and
Minister for Defence