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O'Kelly, C., Hackett, C., Patton, C., & Hopkins, S. (2021). *A Roadmap to Recovery: Proposing a Forward-Thinking Commitment for Northern Ireland post Covid-19*. (QPOL Policy Paper; No. 8). QPOL (QUB).

Document Version:

Publisher's PDF, also known as Version of record

Queen's University Belfast - Research Portal:

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A Roadmap to Recovery: Proposing a Forward-Thinking Commitment for Northern Ireland post Covid-19

January 2021

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Executive Summary

In the international business and human rights legal world, policy documents, communications and reports from the OECD, ILO and the UN have all focused on the socio-economic recovery from Covid-19.¹

They have all recognised the impact of the global pandemic, cautioned against diluting human rights and argued that Covid-19 has created a catalyst for change.

To date, the response to the crisis by the Northern Ireland government is to react to unfolding economic crises with initiatives to stimulate the economy and protect business.

Although we recognise that this is crucial, a more holistic approach to recovery can help future-proof the economy and ensure that recovery champions a better society.

As such, we have proposed a draft roadmap that can help achieve this. We recognise that the rights impacted by Covid-19 stretch far beyond what we

have proposed. We have focussed on the key areas that touch and concern the business and human rights movement.

This is to start, not end the conversation on recovery and ensure the centrality of human rights protections.

This framework would allow the Northern Ireland government, businesses registered, based, or with subsidiaries in Northern Ireland, and Civil Society Organisations (CSOs) to collectively recover from the Covid-19 crisis in a way that maintains the key tenets of human rights for their citizens and stakeholders.

A more holistic approach to recovery can help future-proof the economy and ensure that recovery champions a better society.

A Roadmap to Recovery

General Principles

The State needs to recognise that:

1. Businesses are under untold financial and economic pressure;
2. Citizens have experienced untold suffering and stress;
3. Where citizens have experienced a human rights impact as a result of business activity, they are entitled to a remedy;
4. Recovery will require financial assistance, multi-stakeholder dialogue and a commitment to go beyond a return to the status quo.

Business needs to recognise that:

1. Regardless of economic woes, human rights commitments must not be compromised, diluted or abandoned;
2. Specifically, human rights due diligence policies, reports and investigations are a necessary business transaction cost. Further, due diligence creates a positive legal duty for boards of directors to consider the impact of their activities on the communities in which they operate. This includes subsidiaries in the supply chain;
3. Where a human rights impact has occurred due to business activities, business has a responsibility to remedy;
4. Returning to prosperity requires investment in people, supply chains, communities, stakeholders and the environment.

Victims need to be reassured that:

1. Their human rights are important;
2. There are built-in protections to ensure that their rights are protected and respected regardless of the economic situation;
3. Where human rights impacts have occurred, they are entitled to remedy. Judicial and non-judicial remedies are available and the full suite of routes to remedy

continue to be available regardless of lockdown implications on state functions.

Specific Areas in Need of Commitment

Employment

1. Business will respect domestic and international employment laws and regulations in all their business activities (including supply chains).
2. All frontline workers will have access to safe and reliable personal protective equipment for as long as medical advice deems this necessary.
3. All frontline workers will have full access to childcare and education services. Childcare and Education sector will receive adequate funding to ensure that this is possible.
4. All workers at all stages of the supply chain will be able to safely join a union.

Employment Benefits (Leave)

5. The State will explore, expand and develop existing leave and social security protections for all those impacted by economic crisis. This includes casual workers, gig workers, zero contracts, and those who are self-isolating to protect themselves and others.
6. The State will identify the specific challenge of global pandemics on the workforce from a sickness perspective and commission an investigation into how we as a society can be better prepared in future.

Employment Recovery – 'Building Back Better'

7. State and Business will commit to recognising the impact of unpaid work on careers, capacity to work, and hours of work. The state, businesses and Civil Society Organisations (CSOs) commit to investigating the gender dimension of unpaid work and put in place measures to protect the right to work. This may include (but is not limited to):
 - a. commitments and policies on gender;
 - b. exploring a suite of leave options;

- c. supporting additional education opportunities;
 - d. flexible working hours.
 - e. For those who wish to work but who have caring responsibilities that preclude this under the current environment, the state will commit to working with local authorities, the carer and the person receiving care, to provide and secure a full and suitable care package for all involved.
8. Business should comply with all international and domestic laws on discrimination in employment practice.
 9. Business should detail in an annual statement how they have committed to promoting equality and diversity in the work-place (including equalities of opportunity).

Expanding Labour Rights

10. All workers, including migrant workers, those working in the gig economy and those on zero hours contracts will be entitled to the full suite of health and social security benefits.
11. Those workers (and their families) who may be undocumented, will still be entitled to the full range of human rights protections afforded to citizens of Northern Ireland.
12. The State will ensure that migrant workers are entitled to eviction protections from housing during times of crisis.
13. Business should not have any lesser obligation to migrant or casual employees than to the rest of their workforce.
14. Businesses found to be limiting the rights of any employees (including within the supply chain) will be debarred from accessing any recovery financial stimulus packages from state or national government.
15. Business should detail in an annual statement any attempts that they have made to ensure no slavery or trafficking in their supply chain.

Vulnerable Groups

16. The State and Business will recognise the positive contribution of women and carers to the workforce.
17. The State will identify special stimulus for vulnerable groups in recovery packages. These include, women, carers,² those with a disability, those from a Black, Asian and Minority Ethnic (BAME) background and members of the LGBTQ+ community. Further, the State will commission a report into their experiences and the protections afforded (or not afforded) under the existing equality provisions in Northern Ireland both during the pandemic and generally.
18. The State and Business will recognise the positive contribution of migrant workers and those working in the gig economy to the province's economy.
19. The State will work with Business and Civil Society Organisations (CSOs) to end zero hours contracts where these are deemed to be exploitative and ensure that all workers feel secure in their employment.
20. The State will revisit equality protections enshrined in law, amend and update as necessary to offer a full range of human rights protections for all those who live and/or work in Northern Ireland.

Communities

21. State, Business and Civil Society Organisations (CSOs) will work together to identify opportunities for partnership in delivering emergency services within communities.
22. State, Business and CSOs will identify opportunities to engage with local communities.
23. State will incentivise schemes to enhance digital literacy and confidence within local communities.
24. State will ensure access to technology is assured in any future crisis.
25. State, Business and CSOs will explore opportunities to develop new partnerships with community groups to access those in communities whose voices might otherwise be lost.

26. State, Business and CSOs recognise the interdependence of deprivation as set out in the sustainable development goals. They recognise the importance of considering communities within the supply chain of business in endeavours to promote, protect and respect human rights.
27. Business should recognise the detrimental impact that Covid-19 and associated measures may have on communities within supply chains. They will work with CSOs to ensure that any work in those regions adequately captures inputs from community groups.
28. The State and Business will recognise, respect and protect the right to privacy.
29. The State and Business will ensure that all privacy compromises pertaining to the Covid-19 crisis is proportionate. Further, they commit to destroying any and all data that compromises privacy rights when this is no longer required for contact tracing.
30. The State and Business will recognise vulnerable groups (including children and those with limited legal capacity) and will ensure additional protections of their privacy rights.
31. The State will work with vulnerable groups to put on legislative footing privacy protections in recognition of their status.
32. Business should recognise the importance of privacy rights to all those impacted by their business activities, including subsidiaries in supply chains.
33. Where restricting rights is not held to fall within the Siracusa principles of necessity and proportionality, those impacted will be entitled to a remedy.
34. Remedy includes all remedies (judicial and non-judicial) recognised in international human rights law.
35. The State has a duty to ensure appropriate pathways to remedy for its citizens who have experienced a human rights impact as a result of business activities.
36. The State has a duty to ensure that limitation of means, inability to access judicial services (due to closures) will not preclude remedy. State will ensure that all pathways to remedy are identified and signposted clearly in an accessible manner in relevant government communications.
37. Business has a responsibility to ensure that where their business activities caused a human rights impact, they will ensure remediation. This is regardless of where on the supply chain the impact occurred. Further they will report on the nature of the remedy.

Privacy Rights

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30. The State and Business will recognise vulnerable groups (including children and those with limited legal capacity) and will ensure additional protections of their privacy rights.
31. The State will work with vulnerable groups to put on legislative footing privacy protections in recognition of their status.
32. Business should recognise the importance of privacy rights to all those impacted by their business activities, including subsidiaries in supply chains.
38. Business shall recognise that their legal obligations to carry out human rights due diligence does not limit their legal liability in cases where a human rights impact has occurred.
39. Relevant state departments will collate data on remedies sought and issued and invite Business to submit annual reports on status of remediation claims.
40. Where Business has not remedied harm within a reasonable timeframe, they will be prevented from applying to government stimulus packages for economic recovery post-Covid-19.

We recognise that these commitments are ambitious and costly, but if the calls for building back better are to be realised, an ambitious response is needed.

Remedy

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In Conclusion

We believe that this comprehensive framework recognises the importance of stimulating the economy and employment, but we believe that this can be done in a way that supports workers, incomes and relies on multi-stakeholder dialogue.³ Further, it ensures that the recovery will ensure a more equitable distribution of benefits (e.g. gender equality) and enhance social as well as economic development.⁴ We have suggested a significant increase in reporting measures for businesses with requirements for reporting on discrimination, modern slavery, as well as due diligence requirements.⁵ We recognise the importance of procedural commitments to human rights in placing the respect of human rights at the centre of business operations.

We believe that a culture of reporting will lead to a culture of embedded commitment to human rights protections. We have reinforced the importance of remedy in cases where a human rights abuse has occurred. Although we have not suggested sanctions, we have incentivised compliance with requirements by linking it to access to financial bail-out and stimulus packages. We recognise that these commitments are ambitious and costly, and that the Northern Ireland government is reliant on the wider UK government for funding to aid recovery. However, if the calls for 'building back better' are to be realised, an ambitious (and initially costly) response is needed.

Footnotes

1. e.g. UN (2020) Shared responsibility, global solidarity: Responding to the socio-economic impacts of COVID-19, <https://unsdg.un.org/resources/shared-responsibility-global-solidarity-responding-socio-economic-impacts-covid-19> accessed 6 July 2020; COVID-19 and Responsible Business Conduct, (OECD) <http://mneguidelines.oecd.org/covid-19-and-responsible-business-conduct.htm> accessed 3 December 2020; ILO Policy Brief (May 2020) 'A policy framework for tackling the economic and cultural impact of the COVID-19 crisis,' https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_745337.pdf accessed 14 July 2020.
2. Although we note that carers do not typically fall within 'vulnerable groups', we believe that the Covid-19 pandemic has showcased the unique challenges that they have in entering the workforce.
3. Building on the ILO Policy Brief (May 2020) 'A policy framework for tackling the economic and cultural impact of the COVID-19 crisis' pg. 5-16. Available at https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_745337.pdf Accessed 14 July 2020.
4. See for example the Sustainable Development Goals.
5. Recognising the limitations of the existing reporting system in NI, particularly around Modern Slavery. These reporting mechanisms are in addition to those set out in relevant Company Law legislation (e.g. s 415 and s172 Company Act 2007).

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