



Christian Aid submission to the UN Working Group on Business and Human Rights

Project on business in conflict and post-conflict contexts

April 2020

Introduction

This submission draws upon Christian Aid's research, analysis and country experiences in the areas of peacebuilding, business and human rights and fiscal justice. We hope our organisational submission, and our contributions to the Joint Submission by Amnesty International, the Business, Conflict and Human Rights Network (BCHR Network), Christian Aid Ireland, Quaker United Nations Office (QUNO) and Swedwatch are useful insights and recommendations for the Working Group's project on identifying policies and practices for states and business in conflict and post-conflict contexts.

In 2016, Christian Aid adopted 'From Violence to Peace,' as a strategic priority to address critical trends in violence and conflict in the countries in which we work. Over the last number of decades, we have principally worked on large scale programmes of governance, human rights, conflict prevention, peacebuilding and humanitarian, mostly in countries affected by violence and conflict. This is where the majority of our work on 'From Violence to Peace' has advanced. As human development cannot be achieved without addressing and mitigating violence, we identified a clear organisational need for a more focused approach to peace. In response to this in 2016, we developed our [global strategy](#).

Over the last 30 years, there has been a decrease in the numbers of armed conflicts, but violence and conflict continue to devastate societies. Whether it is large-scale criminality such as gang violence in El Salvador or formal conflict in Syria, violence is complex and takes on different cycles and forms depending on the context. One of the root causes, among many, is inequality, fuelled mostly by the neo liberal economic practices that prioritise profit over the wellbeing of broader community and society. This prioritisation not only exacerbates inequalities but contributes to marginalising the most vulnerable and exacerbates existing levels of unrest and conflict. Without states and business recognising their role in preventing violence and mitigating conflict, Christian Aid believes sustainable peace and development will not be possible.

Christian Aid welcomes the initiative by the UN Working Group (UNWG) to develop recommendations for business in contexts of conflict. This submission aims to respond to three of the key focus areas of the Working Group's project, on which Christian Aid has most analysis and experience, namely: 'what specific measures should business take in conflict and post-conflict situations?; what does responsible and sustainable investment in post-conflict and reconstruction contexts look like in practical terms?; and what is the role of business in transitional justice?

What specific measures should business take in conflict and post-conflict situations?

As a starting point for understanding conflict and contexts affected by violence, language and definitions are important. The use of the term 'post conflict' can be problematic as it can often skew understanding of a context, either by assuming that there was an organised conflict (i.e. civil war, internal armed conflict, insurgency) in the first place or that conflict has stopped/ reached a peaceful solution. Conflict and violence doesn't follow such a clear path but a more non-linear, often cyclical pattern. Is Colombia considered post conflict due to the signing of the peace accords, despite the notable increases in the targeting and killing of human rights defenders? Is El Salvador considered post conflict, despite having one of the highest rates of homicide in the world and causing major insecurity and displacement? Does Zimbabwe even register in a category despite its recurring political and economic violence?

If a country is classified as 'post conflict' it can signal readiness and openness for business, without consideration for the risks of reinforcing human rights abuses or driving more conflict. Violent conflict often contributes to a breakdown in governance. For example, poor regulation (i.e. land rights) and rapid efforts to stimulate investment (i.e. economic land concessions and special economic zones) can pave the way for other forms of conflict and rights abuse such as land-grabbing and dispossession, discrimination against certain groups, environmental destruction or negative health impacts. The UN Sustaining Peace Agenda states that pre and post conflict phases are time bound and risk 'path dependent responses' and therefore all techniques should be drawn upon depending on the context.¹ Although economic measures and investment are vital for creating jobs, they must be based on human rights centred policies, and human rights due diligence so they create decent jobs, reduce inequality, and promote empowerment of marginalised groups, often women and minorities.

To better understand the context, and the positive role and contribution of business in contexts of violence and conflict, conflict analysis and conflict sensitivity are crucial measures for business.

Recommendations:

- The UNWG should avoid the language of "post conflict" and assess ways the UN could accurately describe the cycle and different forms of violence that occur, reoccur and emerge. An output from the WG should articulate a more nuanced classification, that better captures the operating environment and political and social landscape of the local context. It should also articulate the nexus between international human rights law and humanitarian law, which still applies (although with limited scope), and that corporations operating in conflict settings must respect and comply with both.
- Business and states should conduct conflict analysis (including robust gender and power analysis), either independently by external experts or through trained and skilled internal personnel. This can 1) inform business interventions so they are not reinforcing conflict or violence (i.e. supporting certain actors or perpetuating conflict issues such as land rights or inequality) and 2) support business to identify opportunities for deescalating conflict and promoting peace, and how their interventions can support rather than hinder. Conflict analysis must not be a one-time activity and should be regularly updated to ensure it objectively reflects and adapts to changes in the context.
- Business should undertake risk assessments from gender-sensitive human rights due diligence and develop strategies to manage those risks (for communities and individuals) in a

¹ <https://www.un.org/pga/72/wp-content/uploads/sites/51/2017/12/18-12095-PGA-Book-Striving-For-Peace-web3-small.pdf> pg. 47

conflict sensitive way, again either independently or through trained and skilled internal personnel. This can be done through constant monitoring and assessing of the interaction between business intervention(s) and the conflict. It should be grounded in human rights law whereby respect for human rights is maximised and abuse is prevented or mitigated as soon as possible. If business is conflict sensitive they can contribute to more stable environments, which will not only facilitate social growth but also economic growth.

- To ensure conflict analysis and conflict sensitivity is undertaken, states must ensure that the legal and political environment supports mandatory human rights due diligence for companies, with clear risk analysis for business and communities so investment doesn't become a new driver of violence. It is vital that due diligence requirements identify differentiated impacts on men, women, sexual and gender minorities and appropriate mitigation strategies.

What does responsible and sustainable investment in post-conflict and reconstruction contexts look like in practical terms?

After the peace agreement was signed in Colombia in 2016, it was expected to bring about increased trade and investment, especially as territories, that were once inaccessible because of violence, were potentially open for business. However, because land was a central issue in the 50-year internal conflict, new and different types of violence began to emerge. With the presence of agro-business and mining companies, violations such as renewed dispossession, or violence against community members who challenged/opposed investment projects occurred. One key learning from Christian Aid's partners engagement in the peace process and its implementation was that tax justice and inclusive market development, among others, are vital for sustainable peace.²

Firstly, without a just tax system, governments are unable to mobilise the maximum available resources to meet their human rights obligations as well as achieving the Sustainable Development Goals 2030. The Human Rights Council's Special Rapporteur on extreme poverty and human rights Professor Philip Alston, as well as his predecessor in the role Magdalena Sepulveda, have regularly noted that the lack of resource mobilisation puts rights at risk, while the CEDAW committee has agreed that tax havens, which undermine states abilities to raise revenue, prevent effective action to end all forms of discrimination against women. Moreover, the Stockholm Declaration and the New Deal for Engagement in Fragile States recognise the need to scale up support to domestic resource mobilisation and tackling tax evasion schemes to address the root causes of violence.³ In some peace deals, for instance in Guatemala, there were commitments to improve tax collection as part of the reconstruction process and fulfil social and economic rights commitments.⁴

Tax abuses should therefore be considered human rights abuses. The impact of tax avoidance and abuse is recognised as a dimension by the Business and Human Rights Working Group in its gender guidance. The UN Guiding Principles on Business and Human Rights also treat companies as responsible for activities in all their subsidiaries and operations, which therefore includes operations in low-tax jurisdictions with high levels of secrecy – known as tax havens. Companies and individuals can use schemes that are technically legal, to exploit loopholes and gaps in international tax systems to shift untaxed wealth into tax havens, but often illegal, especially from the perspective of countries

² https://www.christianaid.ie/sites/default/files/2018-11/engaging-with-the-peace-process-in-colombia-reflections-from-christian%20aids-programme_0.pdf

³ https://www.pbsbdialogue.org/media/filer_public/1e/23/1e237c73-5518-4a03-9a87-b1aa6d914d20/stockholm_declaration.pdf

⁴ <https://www.cesr.org/without-progressive-fiscal-policy-guatemala-violates-human-rights>

in the global south.⁵ This international tax abuse, as part of wider illicit financial flows costs developing countries an estimated \$416 billion in lost tax revenues.⁶ Therefore, the impact is fewer resources available to governments for peacebuilding, implementing peace agreements, strengthening governance institutions, the rule of law, and other crucial government led initiatives.

Many states in addition to the international tax concerns, and lack of international tax co-operation, also fail to mobilise domestic revenue at an adequate level. According to the OECD report on Fragile States 2014, 'fragile states mobilise less than 14% of their GDP in tax revenues' and argue that it is in these contexts that accountable tax systems are so crucial not only for recovery from conflict and violence but also for building trust and mutual accountability between states and citizens for sustained peace.⁷ Recognising this, the Addis Tax Initiative agreed at the Addis Ababa Financing for Development Conference in 2015, to double the amount of aid support towards strengthening tax systems, an initiative that remains unfulfilled as much of aid funds are now used to mobilise private financing instead. Efforts to raise taxes from the general population will continue to be difficult if there is a strong perception that multinational companies or wealthy individuals are abusing or avoiding tax and not being held accountable. Moreover, this challenge will be intensified by the lack of an explicit human rights centred economic policy. Such a situation will not only hinder national efforts for sustainable peace but undermine the social contract and democracy itself.

Secondly, without inclusive market development, the risks of raising inequalities and worsening the socio-economic situation are almost unavoidable. Although there can be exponential growth in certain contexts through macroeconomic stability, it is clear from experiences of different middle-income countries across the world that this has not always led to more peaceful societies. According to the World Bank, Brazil made impressive progress on the reduction of poverty and inequality between 2003 – 2014 with an approximate 29 million people lifted out of poverty.⁸ UNDP also attributes this progress to the 'pro poor character' of its growth and the 'unique combination of economic and social policies'.⁹ However, Brazil is still plagued with high levels of violence, having 21 of the most violent cities in Latin America in 2018. Although there has been a positive decrease in homicides in 2019, Oxfam predicts that it will take decades for Brazilian women to earn equal pay (by 2047) and even longer for black Brazilians to earn the same as white Brazilians (by 2089).¹⁰ The World Bank maintains that economic advancements in the past were not sustainable because they were built on fragile structures that were exclusionary in nature with little to no respect for human rights.¹¹ A learning from Brazil is that increases in inequality must be prevented for the reduction of violence and to ensure inclusive economic growth. This can be done through fairer and more progressive tax systems, reducing privileges for the wealthy, and greater investment in public services (health, education) for more equal opportunities.¹²

Business should use their leverage to ensure their investment is contributing to greater equality and inclusive growth and equally demand it if absent. One of the recent opportunities available to support business to do this is the Cadmos Peace Investment Fund, which aims to support the

⁵ <https://www.theguardian.com/global-development-professionals-network/2017/jan/14/aid-in-reverse-how-poor-countries-develop-rich-countries>

⁶ <https://www.christianaid.org.uk/resources/about-us/trapped-illicit-finance-report>

⁷ <https://www.oecd.org/dac/conflict-fragility-resilience/docs/FSR-2014.pdf>

⁸ <https://www.worldbank.org/en/country/brazil/overview>

⁹ https://www.ipc-undp.org/pub/eng/PIF33_Is_there_a_Brazilian_model_of_development.pdf

¹⁰ <https://www.oxfam.org/en/brazil-extreme-inequality-numbers>

¹¹ <https://www.worldbank.org/en/news/opinion/2016/05/17/brazil-article-resume-growth-sustain-social-achievements>

¹² <https://www.weforum.org/agenda/2020/01/what-happens-next-in-brazil-has-global-consequences-here-are-three-priorities-for-the-next-decade/>

achievement of SDG 16 on the promotion of peace, justice and strong institutions. It was set up by Assets Management company, De Pury Pictet Turrettini and Swiss foundation, PeaceNexus. The fund offers expertise and guidance to large companies in countries affected by conflict to invest and operate in a way that generates both positive financial and peace-building dividends.¹³ In its annual report 2018/2019, the Fund reports that in the last five years, there have been '37 instances of positive engagement'. In other words, the companies have made improvements on at least one weakness, as recommended by Cadmos.¹⁴ This is an example of improving business engagement in the area of human rights and peacebuilding that could guide other business.

Lastly, without states prioritising policy coherence as an overall mechanism for government, responsible and sustainable investment will not be possible. Policy coherence is crucial for ensuring that tax justice systems and promotion of trade and markets are not undermining development, human rights and peace policies but intentionally contributing to their realisation. This requires strong leadership, oversight and robust coordination within and between government(s).

Recommendations:

- States should ensure that human rights are at the centre of their policies to ensure that fiscal policy balances public and market-based provisions to prevent inequality and ensure inclusive economic growth.
- States should be central and empowered to ensure progressive governance and generate public resources and consider therefore tax abuses as human rights abuses – both when made by states or by business actors abusing existing tax laws or practices, including gender sensitive systems and genuine and inclusive consultations that protect the right to free prior and informed consent. This benefits citizens and business alike as it supports more robust regulation and legislation, more equal wealth generation and ultimately reduced instability and risk. States should promote public transparency for this to happen, including public registries of real owners of companies, trust, and public financial reporting of multinational companies on a country by country basis including taxes paid in each jurisdiction so that companies pay their fair share of taxes.
- Stronger investment is required to strengthen domestic resource mobilisation, accountable and transparent tax systems and equitable progressive, gender responsive budget allocation to support peacebuilding initiatives, and stronger institutions to ensure peace and development in contexts affected by violence and conflict.
- States should ensure registered companies are tax resident where they are registered, without exception. This would remove incentives for multinationals to book sales in tax havens, and ensure they are booked in countries where sales are made, especially developing countries.
- Business should avail of expertise in peacebuilding and conflict prevention to ensure their process of investment and operations are not doing harm, responsibly contributing to inclusive markets and promoting human rights centred economic policies.
- Businesses should seek out opportunities for partnership with human rights and peacebuilding organisations to intentionally design their approach to sustainable development and peacebuilding, like the Cadmos Peace Investment Fund.
- States should conduct research on effects of policies to detect where they can undermine each other and how their results (known or unknown) may impact developing countries.
- States should set up a 'Policy Coherence for Development' mechanism to monitor and ensure the development, design and results of a government's development policies are not undermined by policies in other areas. Government and state policies should support

¹³ <https://www.unpri.org/4828.article>

¹⁴ <file:///C:/Users/GKilcullen/Documents/Work%20Research/Business%20and%20human%20rights/Cadmos-Peace-Investment-Fund-2018-2019.pdf>

development objectives where feasible, and at a minimum ensure these policies do not adversely impact developing countries.

What is the role of business in transitional justice?

Answers to the previous two questions can also help to inform this question. However, from Christian Aid's analysis and partners experiences, it is not possible to address this question without setting out the paramount role of the state, and the positive dynamics that can be created between it and business in transitional justice.

Unfortunately, too often business have been identified as contributors to, or drivers, of conflict. For example, the Truth and Reconciliation Commissions in South Africa and Liberia both cited the negative role of business, either in maintaining the status quo of apartheid or their involvement in human rights violations. Since transitional justice is often part of a broader peace process, business can be a force for good in ensuring that some of the wrongs done in the past (i.e. hiring practices that discriminated against a specific social group, land appropriation) are addressed as part of a reparations process, keeping a conflict-sensitive approach and ensuring that any effort to include the private sector in transitional justice is geared towards sustaining peace and preventing conflict. In this way business can work as a positive agent for development and change, supporting transitional just and contributing towards sustainable peace.

Christian Aid's understanding of transitional justice: ...'an approach that can help create the conditions for peace, security and development. It refers to the set of judicial and non-judicial measures implemented in different jurisdictions to redress the legacies of massive human rights abuses committed in times of violent conflict.'¹⁵

Following periods of sustained violent conflict, many states prioritise neoliberal macroeconomics which reduces the role of the state and puts heavy reliance on privatisation and the utilisation of various fiscal incentives to attract foreign investment. Trade agreements have been a principle avenue for these policies, with trade missions predominantly focused on profit and investment, with not enough coordination between development and human rights personnel within departments and embassies to shape the agenda and guide analysis for trade delegates. This siloed engagement not only weakens systems of governance but can also undermine the UN Guiding Principle on community consultation and the ILO's Convention on the right to free prior and informed consent, allowing projects and investments to be pursued at the cost of the poorest and most vulnerable. For example, the 2012 Free Trade Agreement between Colombia and the United States allowed US-subsidised agricultural products to freely enter the country to compete with local producers. At the time, Oxfam predicted devastating effects on the agricultural sector. They argued that around 1.8 million farmers (women farmers suffering the most¹⁶) would lose a substantial portion of their income and be left with three choices: join guerrilla movements/groups, migrate to the cities, or cultivate illicit crops to make ends meet. Within eight months of the FTA coming into effect, agricultural imports had increased by 50%, and the local press reported that, 'as was entirely predictable, the initial damage is occurring in agriculture, where the country's tariffs have been relinquished and U.S. subsidised goods accepted'.¹⁷ Within two years coca cultivation, was rising steadily, eventually reaching a historic peak in 2017 but the connection with national economic policy, and the steps required to move from a conflict economy to a peace economy, was rarely

¹⁵ <https://www.christianaid.ie/sites/default/files/2018-02/conflict-transformation-peace-building-learning-paper.pdf>

¹⁶ Mainly because of patriarchal oppression that limits their access to land and credit. Such marginalisation becomes even more acute when intersected with other inequalities i.e. race, class and ethnicity

¹⁷ <https://www.oxfamamerica.org/static/media/files/dashed-expectations-media-brief.pdf>;
<https://www.thenation.com/article/archive/horrific-costs-us-colombia-trade-agreement/>

made. In this context, illicit crop cultivation represents a survival strategy for the poorest and most vulnerable groups, in the absence of state support, lack of access to credit, lack of access to land, the absence of social protection, and crucially the absence of viable economic alternatives as a result of inequitable macroeconomic policies.

The OECD's recent policy brief on 'Engaging and consulting on trade agreements', to avoid dominance by vested interests and broaden the consultations argues that representation is key. Representation not only among different groups such as the private sector, CSOs, broader civil society (i.e. indigenous groups, women, youth, academia), government, parliamentarians, but also within them in terms of knowledge and resources.¹⁸ The European Peacebuilding Liaison Office found that trade agreements can be a positive opportunity for influencing peace, especially through support for reform in democracy, human rights, social and environmental standards. Progress is most notably observed in the area of labour rights.¹⁹ However, there must be a will among business to demand broad and inclusive consultations during trade agreements, especially with countries affected by conflict given the complexity involved, to ensure discussions consider ways of mitigating risks, avoid negative social consequences and prevent human rights abuses.

Another consequence of neoliberal macroeconomic policies in transitional phases, is the proliferation of the illicit economy mainly because of its top down reforms and practices. In countries like Colombia, Myanmar and Afghanistan, farmers engage in illicit economies as a coping mechanism and survival strategy, because economic policies and practices have created blind spots, prioritising companies and criminalising those who cultivate poppies, coca etc, without providing viable economic alternatives. This further marginalises vulnerable groups from development dividends and economic recovery. In Afghanistan alone, the opium industry provides full-time employment to over half a million farmers. Across the Andes mountains, on small plots of land used mainly for subsistence agriculture, hundreds of thousands of families supplement their income by growing coca or cannabis. According to estimates, the global value of the illicit drug market could be between US\$300 and US\$600 billion a year. Traffickers capture most of this income, while less than one percent of the final retail price is retained by farmers, of which women and girls are most affected.²⁰ The private sector has a role, in collaboration with states and civil society, through its engagement and support for the sustainable development goals. They can pledge commitments to provide opportunities for alternative development opportunities instead of promoting the criminalisation and eradication of livelihoods. Criminalisation has exposed the poorest and most vulnerable communities to violations of human rights, displacement of land, extreme violence and extrajudicial killings.

A last consequence to be addressed here is how such policies can undermine the UN Guiding Principle on community consultation and the ILO's Convention on the right to free prior and informed consent, allowing projects to be pursued at the cost of the poorest and most vulnerable. Human rights defenders and community leaders who challenge and oppose international projects and investment, are often either caught in the firing line or targeted. This can sometimes include individuals and groups affected by the investment but were not adequately consulted or their views were not respected. According to Front Line Defenders Global Analysis of 2019, 'land, environmental and indigenous peoples' rights remained the most dangerous sector of human rights defence due to the profit-driven exploitation of natural resources, combined with rampant corruption, weak governments and systemic poverty'.²¹

¹⁸ <file:///C:/Users/GKilcullen/Downloads/Engaging%20and%20consulting%20on%20trade%20agreements.pdf>

¹⁹ http://eplo.org/wp-content/uploads/2017/03/EPLO_CSDN_Discussion-Paper_Trade-Agreements.pdf

²⁰ https://www.christianaid.org.uk/sites/default/files/2019-07/Peace%2C%20illicit%20drugs%20and%20the%20SDGs%20-%20a%20development%20gap_1.pdf

²¹ https://www.frontlinedefenders.org/sites/default/files/global_analysis_2019_web.pdf

Recommendations:

- States should ensure business are accountable for past economic crimes and human rights abuses and develop a strategy on how they can contribute to transitional societies by aligning with peace processes. One opportunity is for business to be guided by national development plans that provide for sustainable and equitable development, including the creation of decent jobs for low-income groups through investment, not only in primary or extractive industries but also secondary industries. In this, business have a key responsibility to ensure equality of opportunity or even to redress historic injustices perpetrated against excluded groups.
- Fiscal incentives offered by way of encouraging foreign direct investment should be subject to regular and ongoing monitoring to ensure they are contributing to human rights based social and economic development. Incentives should be developed in a consultative and transparent manner with the intended objectives of the incentive clearly articulated.
- Business should ensure they have a comprehensive understanding of specific conflict dynamics in the local context, with obligations to get advice from states, diplomatic missions (development and human rights teams) and international human rights groups, including on issues such as the presence of armed actors, the status and legality of land ownership (avoiding stolen lands that displaced peasants) so investments do not act as drivers of violence. Business should demand this advice and develop detailed conflict analyses which inform their policies and practices, to avoid a catalytic role or complicity in human rights abuses and systematic injustice.
- Based on conflict analysis, business should demand that trade negotiations and agreements are informed by a broad consultation of different stakeholders, including civil society, to ensure they have explicit aims to reduce poverty and contribute to broader peace dividends in contexts affected by conflict and violence. Trade agreements should have specific chapters concerning human rights safeguards, along with any impacts trade may have on marginalised groups, including women, indigenous people, or minority ethnic groups.
- States need a richer understanding of how the formal and informal economy connect and what would enable inclusive economic transformation and sustainable peace, including the socio-economic and political factors that underlie illicit drug cultivation. For example, in Bolivia, the Morales administration improved infrastructure, developed a comprehensive agricultural policy, including access to land and credit, and legalised certain levels of coca cultivation to supply the domestic market. A transition out of conflict needs to have inclusive economic solutions at its heart and grounded in a people centred human rights-based approach.
- In relation to consultation and free, prior and informed consent, states should enforce legal protections that are gender specific for human rights defenders, union representatives, social leaders, tax whistle-blowers and environmental activists working to protect rights in the context of business practices. Business should not obstruct these activities and mechanisms should be established to hold business accountable for complicity in violence.