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Covid-19 as a lens to investigate local approaches to business and human rights: the case of Northern Ireland*

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ABSTRACT

The legal and regulatory framework of business and human rights (BHR) tends to prioritise human rights due diligence (HRDD). This has a role to play in protecting and respecting human rights, but we argue that HRDD's capacity to reflect context showcases BHR's potential to improve the lived experience of those in the communities where business operates.

Here, we consider two contextual phenomena: Northern Ireland and Covid-19. By focusing on a small regional economy, we investigate the impact of size, location, socio-economic and cultural history on how business integrates (or might integrate) in the social life of a community. By addressing Covid-19 and its recovery, we look at how a global event might be experienced differently depending on location, circumstances and levels of community engagement. We conclude that a more holistic approach might facilitate specific local lived interactions between business and human rights.

Keywords: business and human rights; Covid-19; Northern Ireland; recovery; remedy.

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INTRODUCTION

Pandemics are inherently social. They are health emergencies yet also reflect how ill health is determined and distributed across societies, while public health infrastructures determine differential impacts on people's lives.[1] As one *Financial Times* columnist describes, 'stark inequality, both within nations and between them, is good for pathogens … inequality is bad for your health'.[2] Further, recoveries after pandemics end or fade away take place in the context of, and exacerbate, economic and social inequalities. The Covid-19 pandemic that struck worldwide from 2019 played out in this way: both as a systemic and global *disruption* to our economic and social lives and as a *product* of our economic and social lives. It exposed the fragility of individual livelihoods and networks of trade and threw into sharp relief the relationship between existing social structures and harms wrought by the pandemic. We argue that that fragility can only be addressed as a matter for both public and private actors.

In this article we explore Northern Ireland as a jurisdiction whose highly networked existence in economic, geographical and regulatory terms interacts with specific local contexts. Drawing on a business and human rights (BHR) framework throughout, we ask how vulnerabilities and disadvantages associated with society-wide ill health manifest and are managed through both public and private regulation. Northern Ireland and the Covid pandemic provide an interesting and unique lens by which to investigate local and small and medium-sized enterprise (SME) approaches to BHR. Context beyond the pandemic also informs: Northern Ireland experiences a post-conflict environment which prompts significant public health impacts and severe economic dislocations, not least as a legacy of conflict. Finally, its political cleavages and conflicts have been exacerbated in recent years in the wake of the decision of the United Kingdom (UK) to exit the European Union (EU). This status prevails with the latest discussions centred round the Windsor Framework and Northern Ireland's place within both the UK and the EU.

The series of BHR instruments and frameworks that have emerged in recent years articulate a set of business responsibilities and seek to build a consensus, including with business, on the economy's place in social life. BHR includes not only those instruments that *explicitly* articulate BHR frameworks, but also the more 'holistic' range of

1 Christopher T Lee et al, 'Association between preparedness and response measures and Covid-19 incidence and mortality' [2021] medRxiv 2021.02.02.21251013.

2 David Pilling, 'What South Africa and Omicron tell us about inequality' *Financial Times* (London 30 November 2021); echoing Richard G Wilkinson and Kate Pickett, *The Spirit Level: Why Equality Is Better for Everyone* (Penguin Books 2010).

instruments that regulate business interactions with rights.[3] We advocate Macchi's 'holistic' BHR approach to understanding how the Covid-19 pandemic interacted with the economy and commerce. She emphasised the interrelation between 'climate, environmental and human rights challenges'.[4] This 'mutually reinforcing' relationship between climate and human rights law, actively lends greater coherence to the overarching BHR principles as articulated by the United Nations Guiding Principles on Business and Human Rights (UNGPs).[5]

We refer to Macchi's approach throughout because, while the pandemic was global, each locality experienced it within its own peculiar context. Examining, first, how (certain) local regulatory environments shape a pandemic and, second, the regulatory context within which recoveries will take place connects emergencies to law, to business and to societal impact. It lends real life interactions to how we talk around BHR narratives. BHR as a field is buttressed by an intricate toolbox of international guidelines and principles, regional and national legislative initiatives, and directives, as well as civil society influences and industry standards. Binding this together is the idea that states protect human rights, businesses have a responsibility to respect human rights and, where a human rights impact has occurred, victims should have access to an effective remedy. Beyond, the importance of an 'holistic approach' lends greater coherence to BHR, its application and workability.[6] Being universally applicable, many case studies and initiatives have focused on large-scale industries in various regions and countries around the world. Less explored are the

3 Starting with the OECD Guidelines for Multinational Enterprises in 1976. Regularly updated, the 2011 update included a chapter on BHR. The 2023 targeted update renames the Guidelines – now the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct – and offers more guidance on due diligence, continuous learning around remediation and on the need to protect vulnerable groups (Human Rights Defenders etc): Organisation for Economic Co-operation and Development, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD 2023). Also, UN, 'Guiding Principles on Business and Human Rights' (UN 2011); the UN Global Compact; the ILO Declaration of Fundamental Principles and Rights at Work; and the Sustainable Development Goals. This list is not exhaustive. It does not include (for reasons of space) multi-stakeholder initiatives such as the Fair Labor Association, the Extractive Industries Transparency Initiatives, the Kimberley Process Certification Scheme, the Sullivan Principles and so on.

4 Chiara Macchi, 'The climate change dimension of business and human rights: the gradual consolidation of a concept of "climate due diligence"' (2021) 6 Business and Human Rights Journal 93, 108–109; Chiara Macchi and Josephine van Zeben, 'Business and human rights implications of climate change litigation: *Milieudefensie et al v Royal Dutch Shell*' (2021) 30 Review of European, Comparative and International Environmental Law 409.

5 Macchi (n 4 above) 118.

6 See n 3 above.

everyday interactions between BHR within the local context. Here, BHR becomes a tangible *part* of the job, rather than simply someone's role within an organisation.

It is those lesser explored local contexts that motivated this article. We aim to consider the pandemic as a contextual phenomenon within BHR. Bringing one region into focus is crucial, first, because it makes manifest the ways in which health outcomes are determined at regional levels. Second, the kind of holistic perspective that can be offered within BHR helps draw a range of actors – businesses, states, non-governmental organisations (NGOs) etc – into one conceptual frame. Our research questions are twofold. One, what is Northern Ireland's legal BHR framework? And two, how can a single issue (here, the pandemic) demonstrate how myriad actors contribute to BHR protections in a regional outpost (here, Northern Ireland)? These questions are addressed in the following way. The section that follows this introduction frames Northern Ireland as a case study, and the pandemic (and its recovery) as a lens. We then go on to give an account of the legal and regulatory frameworks through which businesses are regulated towards human rights within Northern Ireland. After that, we address specific BHR areas of concern within the Northern Ireland context. We focus on workers' rights, supply chains and the capacity to and of remedy. The penultimate section moves to future-proofing BHR in Northern Ireland by bringing us back to the value of BHR, broadly construed, as both a framework for understanding the pandemic and as a vehicle for building towards a more resilient economy in the face of an uncertain future. The final section concludes.

We make two significant contributions. Focusing on Northern Ireland in this context, is original in and of itself. Research on BHR typically addresses the UK as an homogeneous unit. It does not reflect Northern Ireland's unique political and governance structure, its geographical location, and its business identity. Other countries within the UK may focus on transparency in supply chains. For Northern Ireland, the nature of the local and SME-orientated economy is that they are *parts* of those supply chains. How the Northern Ireland Executive and the business sector engage and interact with these issues will provide insight into the future of the region's engagement with BHR. However, our contribution goes beyond the Northern Irish context. In using Northern Ireland as an example, we are demonstrating how the current 'macro' approach to BHR (both in terms of government/Executive policy and reliance on international broad-brush regulation) risks a failure to consider those local peculiarities that make a particular region attractive to investment in the first place. We urge a turn to context when thinking about BHR both generally and specifically. Our second contribution rests in the proposal for recovery set out in the

penultimate section of this article. Using the context described below and the discussions in the sections that follow provides a starting point for how we should think about BHR both within the region of Northern Ireland particularly, and the 'local' more generally.

NORTHERN IRELAND

Any specific region will have many or even most characteristics in common with others. Northern Ireland is no different. Its health and welfare infrastructures; features of state administration and patterns of social and economic life are unsurprisingly shared with the rest of the UK, the Republic of Ireland and beyond. Northern Ireland is unique just as all regions, localities and states are unique. It is not interesting for our purposes therefore because it is somehow 'uniquely unique'. It is interesting rather as an example of how local dynamics, by both accentuating and attenuating more general characteristics, gave the pandemic form.

The ongoing repercussions of Northern Ireland's conflict, which took 3,720 lives and left 47,541 people with injuries,[7] are at our discussion's heart. The legacy of conflict is inseparable from the 'ordinary' aspects of social and economic life. We take an indirect route to conflict and BHR in these terms: from the everyday economic structures of the economy; to the lacunae opened by the border; to the more direct interplay of legacy and systemic ill-health. These are inseparable from each other and provide a picture of the conflict's less-obvious legacy: that the gaps both revealed and opened by conflict can settle into being an integral part of economic and social life.

This is apparent in the relationship between conflict and health. Physical trauma does not fully capture the conflict's impact on Northern Irish society. Rates of mental ill health have persisted post-conflict, characterised by higher rates of post-traumatic stress disorder

7 Conflict Archive on the Internet, 'RUC/PSNI Statistics: Table NI-SEC-05: Persons Injured (Number) Due to the Security Situation in Northern Ireland (Only), 1969 to 2003' (CAIN, University of Ulster 2002).

(PTSD),[8] including among older people[9] and even with transmission of trauma experiences across generations.[10] By some survey measures, 39 per cent of people in Northern Ireland had suffered a conflict-related traumatic event, with half of those suffering mental ill-health as a result.[11] The World Mental Health Survey Initiative's Northern Ireland study of health and stress estimated that prevalence of mental illness in Northern Ireland is at the 'upper end' worldwide and is the highest in Western Europe. PTSD rates were at the top.[12] Suicide rates in Northern Ireland are the highest in the UK, are higher than in the Republic of Ireland and seem linked to a combination of post-conflict trauma and deprivation.[13]

All things considered, Northern Ireland has been suffering from a significant public health crisis linked to trauma and mental health since *well before* Covid-19 appeared. This is inseparable from economic and social lives being carried out across contested

8 Finola Ferry et al, 'Traumatic events and their relative PTSD burden in Northern Ireland: a consideration of the impact of the "troubles"' (2014) 49 Social Psychiatry and Psychiatric Epidemiology 435; Siobhan O'Neill et al, 'Patterns of suicidal ideation and behavior in Northern Ireland and Associations with conflict related trauma' (2014) 9 PLOS ONE e91532; Margaret McLafferty et al, 'Population attributable fractions of psychopathology and suicidal behaviour associated with childhood adversities in Northern Ireland' (2018) 77 Child Abuse and Neglect 35.

9 Finola Ferry et al, 'Ageing, health and conflict: an investigation of the experience and health impact of "troubles-related" trauma among older adults in Northern Ireland' (NICCT/University of Ulster 2012).

10 Montserrat Fargas-Malet and Karola Dillenburger, 'Intergenerational transmission of conflict-related trauma in Northern Ireland: a behavior analytic approach' (2016) 25 Journal of Aggression, Maltreatment and Trauma 436; E Mark Cummings et al, 'Examining bidirectional pathways between exposure to political violence and adolescent adjustment in Northern Ireland' (2019) 48 Journal of Clinical Child and Adolescent Psychology 296.

11 Brendan P Bunting et al, 'Trauma associated with civil conflict and posttraumatic stress disorder: evidence from the Northern Ireland Study of Health and Stress' (2013) 26 Journal of Traumatic Stress 134.

12 Brendan P Bunting et al, 'Lifetime prevalence of mental health disorders and delay in treatment following initial onset: evidence from the Northern Ireland Study of Health and Stress' (2012) 42 Psychological Medicine 1727, 1735; Healthcare Quality Improvement Partnership, 'National Confidential Inquiry into Suicide and Safety in Mental Health: Annual Report: England, Northern Ireland, Scotland, Wales' (HQIP 2023).

13 Siobhan O'Neill and Rory C O'Connor, 'Suicide in Northern Ireland: epidemiology, risk factors, and prevention' (2020) 7 The Lancet Psychiatry 538; Margaret McLafferty et al, 'Suicidality and profiles of childhood adversities, conflict related trauma and psychopathology in the Northern Ireland population' (2016) 200 Journal of Affective Disorders 97; Rory C O'Connor and Siobhan M O'Neill, 'Mental health and suicide risk in Northern Ireland: a legacy of the troubles?' (2015) 2 The Lancet Psychiatry 582.

spaces and economic structures that are adapted to those spaces: being small-scale, unamenable to regulation and focused on primary production.

Northern Ireland's economy is defined by small and medium-sized businesses to a greater extent than other regions of the UK. This has implications for how the region interacts with global and national supply chains. While, for instance, 45.9 per cent of employment in the UK private sector is with businesses that employ over 250 people, the equivalent figure for Northern Ireland is only 22.1 per cent. Northern Ireland is far more agricultural than the UK generally, which is not atypical for such a region. That said, while only 2.36 per cent of no-employee businesses in the UK are in agriculture, agriculture counts for 17.12 per cent of no-employee businesses in Northern Ireland and 20,506 of 26,089 farms are classed as 'very small'.[14] 'Very small' farms and micro-SMEs shape the economy. Northern Ireland is not only striking for its small number of large capital-intensive employers, but for the fact that enterprises in all sectors tend to be smaller than is the case elsewhere in the UK.[15]

Negative human rights impacts are perhaps most often experienced within the UK as labour-based modern slavery. Unsurprisingly, what evidence there is regarding this form of modern slavery (as opposed, for instance, to sexual exploitation) places victims in agriculture and fisheries, sectors where complex local supply chains are the norm.[16] These sectors share price pressures; dispersed production locations marked by small producers that are traditionally difficult to inspect; and mobile low-skilled workforces.

Northern Ireland's small-scale enterprises are subordinate to the global firms and supply chains upon which the focus of BHR typically lies. They are subjects, not initiators, of BHR policies and are likely to encounter BHR as a form of contractual governance through

14 Department for Business, Innovation and Skills, 'Business population estimates' (BEIS Statistical release 2022).

15 Ibid.

16 Criminal Justice Inspection Northern Ireland (CJINI), Modern Slavery and Human Trafficking: An Inspection of How the Criminal Justice System Deals with Modern Slavery and Human Trafficking in Northern Ireland (CJINI 2020) paras 1.18–1.19. Note: numbers are small and probably under-reported compared to the rest of the UK. It is worth mentioning labour-based exploitation specifically as feeding up into 'legitimate' supply chains.

supplier audit functions and the like.[17] BHR in Northern Ireland being experienced in large part as private governance means moreover that its subjects must navigate it as one part in an overall *private* governance infrastructure including price demands, animal welfare stipulations and so on. Potential for harms and for criminality emerges in such a space.[18] Where modern slavery, for instance, interacts with these sectors, it is inseparable from the legacy of conflict.

This entanglement of economy and conflict involves its interplay with the border between Northern Ireland and the Republic of Ireland. The border is a regulatory barrier certainly, but it is also a regulatory *gap* that emerged from and outlasted the violent conflict. So, while BHR governance is increasingly aligned with the rest of the UK,[19] Northern Ireland's specificity means that it will not play out in the same way. While cross-border policing cooperation on modern slavery is visible and active, the border is, at the same time, a post-conflict conduit for human trafficking with a character all of its own.[20] Organised criminal groups that emerged from paramilitary activities in conflict 'pivoted' away from arms and other smuggling and into people trafficking, using the same networks and routes they had used during the conflict.[21] This is a prime example of specificity, including the difficulties of securitised

17 See Doreen McBarnet and Marina Kurkchiyan, 'Corporate social responsibility through contractual control? Global supply chains and "other-regulation"' in Doreen McBarnet, Aurora Voiculescu and Tom Campbell (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge University Press 2007); also Kateřina Mitkidis, Sonja Perkovic and Panagiotis Mitkidis, 'Tendencies in contractual governance to promote human and labour rights in transnational supply chains' (2019) 23 Competition and Change 397.

18 Genevieve LeBaron and Jane Lister, 'The hidden costs of global supply chain solutions' (2021) early access Review of International Political Economy 1; also Ekaterina Gladkova, 'Farming intensification in Northern Ireland – a state-corporate environmental harm?' (2023) 4 Journal of White Collar and Corporate Crime 110; on other harms and on recent scandals, see Michaela Fox et al, 'Barriers and facilitators to shellfish cultivation' (2020) 12 Reviews in Aquaculture 406; Robert Smith and Gerard McElwee, 'The "horse-meat" scandal: illegal activity in the food supply chain' (2021) 26 Supply Chain Management: An International Journal 565.

19 CJINI (n 16 above); a consultation was completed in October 2022 with a view to introducing legislation. See Department of Justice, Consultation on Measures to Strengthen the Response to Modern Slavery and Human Trafficking (Department of Justice 2022).

20 Paul Ainsworth, 'Three people screened in Armagh as part of human trafficking investigation' *Irish News* (Belfast 15 June 2023).

21 For instance, Henry McDonald and Rory Carroll, 'How IRA and the troubles "industrialised" people smuggling in Ireland' *The Guardian* (London 21 December 2020).

post-conflict policing in Northern Ireland,[22] especially nearer the border, and the challenges of regulation in such a space, coupled with the structures of production that emerged, are not independent from these dynamics, but a part of them.

More general BHR discussions are inevitably rooted in specific locations and situations. BHR will always have a local lens. When it comes to the pandemic, it manifested in Northern Ireland in a context already characterised by conflict-entangled ill-health. The contours of BHR regulation in Northern Ireland will always also be contours of conflict. The economy and the border are not background facts upon which conflict (and life) play out. They *are* conflict and life playing out.

THE NORTHERN IRISH BHR LEGAL AND REGULATORY FRAMEWORK

With context in mind, it is important to situate the BHR regulatory framework within Northern Ireland. As a field, BHR focuses on remedying harm caused by corporate activity.[23] Remedying human rights impacts both characterises BHR and distinguishes it from the parallel, and often interconnected, corporate social responsibility (CSR). Myriad tools have emerged to direct business on how to both respect human rights at all stages of business and when (and how) to remedy when they fail to adequately respect those rights.[24] Thematically, human rights due diligence (HRDD) shapes the space. This requires relevant bodies to exercise reasonable care to ensure that their activity (or that of their subsidiaries/sub-contractors and so on) will not lead to a human rights impact. As far as possible, the 'regulation' of the due diligence space involves directing, influencing, or shaping corporate engagement within human rights. Constrained by the limitations of the corporate form, it has been interesting to see how corporations have interpreted their BHR obligations. With HRDD being such an 'open ended standard',[25] businesses are reliant on interpretations (both internally and externally) as to how HRDD obligations might be met within specific industries, regions and contexts. Case law (such as there is) has highlighted the newness of the area, rather than offering

22 Fionnuala Ní Aoláin, *The Politics of Force: Conflict Management and State Violence in Northern Ireland* (Blackstaff Press 2000).

23 Anita Ramasastry, 'Corporate social responsibility versus business and human rights: bridging the gap between responsibility and accountability' (2015) 14 Journal of Human Rights 237, 238.

24 Barnali Choudhury, 'Balancing soft and hard law for business and human rights' (2018) 67(4) International and Comparative Law Quarterly 961.

25 Macchi (n 4 above) 117.

distinct guidance on how to proceed.[26] As an emerging field, it is understandable that case law and corporate responses are limited, but where these do exist, noteworthy trends emerge. Indeed, Macchi considered context via strategic climate change litigation. In these cases, corporations appear to view HRDD as a business process. Their responses to litigation focus on risk mitigation and integration.[27] This is understandable. The nature of business, the extent of supply chains and the distance between parent boardroom and component-part factory floor means that not all impacts can be anticipated and addressed. How they do approach which impacts and when helps us to see whether they value the respecting of human rights or if it is simply another policy to be interpreted and a procedure to be applied.

The reaction to Covid-19 and the post-pandemic response provides an interesting lens by which to view the BHR regulatory framework in Northern Ireland. Whereas the above describes on a 'macro' level how BHR are perceived, consideration of the BHR framework as it applies to Northern Ireland offers a chance to critique the field on two main levels. First, Northern Ireland, uniquely situated within the UK, is often as much a subject of and to domestic regulation as a drafting party. A place apart on the regulatory level, this also extends into how business is characterised within the region with a proliferation of micro, small and medium enterprises particularly beyond the city zones.[28] For an active BHR regime to protect, *business* must mainstream human rights obligations on a day-to-day level, rather than in churning paperwork outlining how obligations were met over the past financial year. In sum, the distance between potential impact within a business transaction and the boardroom of said business is shorter than sweeping international obligations would have us believe. Covid-19

26 *NGOs v La Société Total Energies SE* (2023) Jugement Rendu en Etat de Référé N°RG 22/53942- N°352 J – W- B7G- CXB4M N°: 2/MC. Here, the court argues that it is not its role to refine what is meant by the 'duty of vigilance' law, or indeed what it is to be a vigilant corporate actor. The argument is that the concept is too new for the courts to direct on it, but beyond that they seem to be implying it is for the stakeholders involved to reach consensus on what it means.

27 Macchi (n 4 above) 98. We would argue that in company responses made to National Contact Points (NCP) under the OECD similar themes emerge. We have looked at the complaints made to the UK NCP. We remark that the NCP process reinforces a broader shift whereby human rights are assimilated into business governance discourses of procedure, or due diligence and of risk. This can be evidenced for example in *IAC & WDM v GCM Resources plc* (2012).

28 For this, we addressed the Invest Northern Ireland Council Briefing Reports (2020). Our observations would suggest that support and business is concentrated within urban areas, and there is less support for border council regions (ie those councils that touch the border with the Republic of Ireland). See Alan McKeown, 'Supporting local business across Northern Ireland' (*Invest Northern Ireland* 18 February 2021).

presents a unique opportunity to assess what currently exists and how this is (un)fit for purpose. As an important aside, it is useful to note that specific responsive legislation was enacted to cope with the Covid-19 pandemic,[29] covering a wide range of areas. Both the Coronavirus Act 2020, and the Health Protection (Coronavirus Restrictions) (Northern Ireland) Regulations 2020 were pieces of emergency legislation that postponed, limited, or suspended human rights.

Domestic legislation

Although less encompassing than the international legal framework (outlined below), regional and national protections within the UK recognise the state's role in protecting human rights.[30] Domestic protections concerning BHR rest primarily in the Modern Slavery Act 2015.[31] Of particular and pivotal interest is the requirement that eligible businesses (those with a £36 million turnover) produce an annual Transparency in Supply Chains Statement (TISC).[32] In this statement, a company documents, or *discloses*, the steps that it has taken to ensure that slavery and/or trafficking has not taken place within the supply chain.[33] The key theme is reporting, one which

29 Coronavirus Act 2020.

30 Due to limitations of space, we have not discussed general human rights protections such as the Human Rights Act 1998, Equality Act 2010 and, for Northern Ireland, the Northern Ireland Act 1998. Regional disparities persist with equality a devolved matter. Protection from discrimination within Northern Ireland is found in s 75 Northern Ireland Act 1998 and the Disability Discrimination Act (as amended) 1995. The Equality Act 2010 does not extend to Northern Ireland.

31 For posterity, see also s 7 Bribery Act 2010 (failure of commercial organisations to prevent bribery). Also, Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 three years on' (2018) 81(6) Modern Law Review 1017; Genevieve LeBaron, and Andreas Rühmkorf, 'The domestic politics of corporate accountability legislation: struggles over the 2015 UK Modern Slavery Act' (2019) 17(3) Socio-Economic Review 709.

32 Modern Slavery Act 2015, s 54 (also known as a slavery and human trafficking statement).

33 Ibid. In force by Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015, reg 2.

persists in the national (and regional) outlook on BHR.[34] Notably, and in comparison, the regulatory environment within the EU (see below) has shifted towards HRDD. HRDD places a more onerous duty on business organisations. The TISC requirement also applies to Northern Ireland, but aside from this, regional requirements on modern slavery rest within regional legislation.[35]

There are a few points of note. First (as discussed in the section on 'Northern Ireland' above), business in Northern Ireland is characterised by mostly micro businesses and SMEs. They often sit outside the TISC requirement. Second, there is a lack of focus on *businesses*' role in preventing and protecting against modern slavery within both the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 and the most recent modern slavery strategy.[36] Whereas this may be attributed to the potentially small numbers involved, and more notably as businesses in Northern Ireland are more likely to be participants in the supply chain, it is still a gap in the regulatory framework for those that might need to rely on it. There is also a tendency by the strategy and regional regulation to characterise modern slavery as sex trafficking. This narrow approach does not capture the extensive spectrum of exploitation that exists within a business context generally or the specific Northern Ireland environment as noted in the section above. Third, as the implications of Brexit are realised, alongside the unique role that Northern Ireland will play in the Common Market Area, the region's response to and understanding of modern slavery (and the role of business) will need

34 This is also evident within case law. Domestic case law focuses on the reach of parent company responsibility for the actions of its subsidiaries. Grounded in the *Chandler v Cape* [2012] EWCA (Civ) 525 precedent, more recent case law has looked at the *level of knowledge and control* the parent has over the subsidiary (*Vedanta*) and the relationship between parent and subsidiary responsibilities (Okpabi). For *Vedanta* see, *Lungowe v Vedanta Resources plc* [2019] UKSC 20. For *Okpabi*, see *Okpabi and Others v Royal Dutch Shell plc and Another* [2021] UKSC. These due diligence reports in *Vedanta* and *Okpabi* might also be part of a corporation's legal duty as set out in s 414c UK Companies Act 2006 (the Strategic Report) and the anti-slavery and trafficking report from the Modern Slavery Act (Transparency in Supply Chains) (2015) Regulations, reg 2. For more see Samantha Hopkins, 'Vedanta Resources plc and another v Lungowe and others' (2019) 70(3) Northern Ireland Legal Quarterly 371–375; also, Hogan Lovells, 'The implications of the UK Supreme Court's decision in Vedanta for the management of human rights risk in overseas operations and supply chains' (*Oxford Business Law Blog* 30 May 2019); S Hopkins, C O'Kelly, C Hackett and C Patton, 'Case Comment: *Okpabi and Others v Royal Dutch Shell plc and Another* [2021] UKSC 3' (2021) 72(1) Northern Ireland Legal Quarterly 148–159.

35 Modern Slavery Strategy 2021 (Department of Justice). Also, submission by Queen's University Belfast, School of Law and Human Rights Centre, 'Draft Modern Slavery Strategy 2021/22' (Consultation Report).

36 Ibid.

reinvigorating. There is a role here also for the Northern Ireland Human Rights Commission (NIHRC). The NIHRC has been a leading and active national human rights institution for BHR – with an extensive National Action Plan for Business and Human Rights and an innovative Business and Human Rights Forum.[37]

European guidelines

Remaining within the EU Single Market and in the UK's customs territory, Northern Ireland is unique in terms of economic regulation. Although some EU regulation is not applicable in the Northern Irish context, the situation remains in flux, and so scope remains for applicability of EU concepts in Northern Ireland. In general, BHR initiatives at EU level are limited, with focus being on trade, product composition and broader company regulation.

Perhaps the most notable EU Regulation is the Non-Financial Reporting Directive (NFRD) (2014/95/EU, amending Directive 2013/34/EU (on financial statements)), requiring a non-financial statement from all companies with over 500 employees, including 'as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters', their policies (including diversity policies), business model, risks and key performance indicators.[38] This was retained in the UK after Brexit, and therefore is applicable in Northern Ireland. However, the nature of Northern Ireland as comprised largely of SMEs means that such requirements are not particularly useful in this specific context – other than where SMEs follow the practices and language of multinational enterprises,[39] a piecemeal method of attaining transparency which does not allow for reliability, comparability[40] or clarity. Indeed, the 'uncertainty and complexity when [companies are] deciding what, where and how to report non-financial information'[41] were issues

37 See 'Northern Ireland Human Rights Commission submission to the Working Group on Business and Human Rights on the role of national human rights institutions in facilitating access to effective remedy for business-related human rights abuses' (Northern Ireland Human Rights Commission October 2019).

38 Art 19a.

39 Norman Fairclough, *Language and Power* 3rd edn (Routledge 2015) 245.

40 Nora Hahnkamper-Vandenbulcke, 'Implementation Appraisal: Non-financial Reporting Directive' (European Parliament, January 2021).

41 Ibid.

recognised in a 2021 briefing from the European Parliament, reporting on the Directive's effectiveness.[42]

The outworkings of Brexit and the Northern Ireland Protocol nonetheless accentuate Northern Ireland's unique position in very specific ways. These speak at times from the UK's industrial priorities directly to BHR regulation. The EU's Conflict Minerals Regulation 2017/82, for instance, came into force in January 2021.[43] The regulation, similar to the Dodd Frank Act in the United States (US),[44] addresses trade in so-called conflict minerals: tin, tungsten, tantalum and gold (known as 3TG). The regulation requires EU-based importers of these minerals to ensure their minerals are sourced responsibly, with special attention paid to risks associated with the Democratic Republic of Congo or adjoining countries.

EU importers must identify risks, design supply chain strategies, establish strong management systems, carry out third-party audits for supply chain due diligence, and report annually. The regulation applies the five principles of the Organisation for Economic Co-operation and Development (OECD) 'Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas', namely: establishing a management system; identifying and assessing supply chain risk; designing and implementing a strategy for

42 This report led to Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, art 1(4). It expanded on the NFRD to include SMEs. It does not currently apply to the UK, although given the necessary relationship between Northern Ireland and the Republic of Ireland it may be in the interests of businesses in Northern Ireland to map their obligations alongside these provisions. Other retained EU Directives exist. These include Regulation 2019/2088 (disclosure on environmental, social, and corporate governance (ESG) issues in the financial sector only); Regulation 2019/2089 regarding sustainability-related disclosures for benchmarks relating to climate. Regulation 2020/852 establishes a framework to facilitate sustainable investment. Its future in the UK is uncertain as it is currently awaiting potential repeal through the Financial Services and Markets Bill. There is a suggestion to replace the 2020/852 with a 'UK Green Taxonomy' but this remains in flux. HM Treasury recently (June 2023) held a consultation in relation to ESG matters which touch on the Green Taxonomy.

43 Regulation 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas 2017 (OJ L2017/130).

44 Dodd–Frank Wall Street Reform and Consumer Protection Act 2010 (PubL 111–203, HR 4173) s 1502; see Galit Sarfaty, 'Shining light on global supply chains' (2015) 56 Harvard International Law Journal 419.

responding to the identified risks; third-party independent auditing of supply chain due diligence; and reporting on due diligence.[45]

The EU regulation came into force *after* Brexit, so is not in force in Great Britain (GB). Because Northern Ireland remains in the EU Single Market, the regulation applies,[46] with the Foreign Office acting as the 'competent authority' for the purposes of the regulation. At the time of writing, GB firms are encouraged to perform due diligence audits for conflict minerals in their own supply chains with regulation envisaged in future. How this sits with the UK's broader 'critical minerals'-intensive post-Brexit industrial strategy remains to be seen.[47]

International guidelines

The international legal framework is shaped by broader policy trends within the field; they are aspirational, forward looking and centred on the idea that a state/region and the business operating within has the capacity to meet those aspirations. In sum, these are focused on large multinationals operating in large, developed, open economies.[48] The BHR ecosystem draws on the interrelationship between public, corporate and civil governance.[49] It is polycentric and captures the coexistence of hard and soft laws.[50] These are used by a spectrum of actors not limited to business, states and civil society.

The BHR ecosystem is grounded by the UNGPs.[51] They represent the first (broadly accepted) attempt to embed corporate responsibilities for human rights into an international legal instrument. In so doing,

45 OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

46 Under the Conflict Minerals (Compliance) (Northern Ireland) (EU Exit) Regulations 2020; Chiara Macchi, 'A glass half full: critical assessment of EU Regulation 2017/821 on conflict minerals' (2021) 13 Journal of Human Rights Practice 270, 283.

47 Department for Business and Trade and Department for Business, Energy and Industrial Strategy, 'Resilience for the future: the UK's critical minerals strategy' (2022); Department for Business and Trade and Department for Business, Energy and Industrial Strategy, 'Critical minerals refresh: delivering resilience in a changing global environment' (2023).

48 This is a broader criticism of BHR and stems from the UNGPs (n 3 above). We would argue that Pillar II, particularly principles 13–15, was written towards the Anglo and/or American profit-orientated corporation. The due diligence requirements closely mirror those reporting requirements that have persisted within the UK and US corporate governance landscape.

49 Cesar Rodriguez-Garavito, 'Business and human rights: beyond the end of the beginning' in C Rodriguez-Garavito (ed), *Business and Human Rights: Beyond the End of the Beginning* (Cambridge 2017) 12.

50 Choudhury (n 24 above). Also, Enrico Partiti, 'Polycentricity and polyphony in international law: interpreting the corporate responsibility to respect human rights' (2021) 70 (1) International and Comparative Law Quarterly 133.

51 See n 3 above.

they create a situation whereby complying with the UNGPs is seen as the 'core and central means for corporate human rights protections at the expense of state based human rights protections'.[52] They remain at the forefront of the international framework due in part to their ability to achieve both a broad stakeholder consensus and 'an authoritative UN imprimatur on implementing minimum standards'.[53]

The UNGPs are valued for their recognition of victims' right to access a remedy where there has been a corporate human rights impact. Demonstrating the corporate responsibility to respect human rights is grounded in the practical pragmatism of the UNGPs. This is achieved through the HRDD requirements of Pillar II generally and principles 15 and 17–24 in particular. Due diligence has filtered into domestic requirements with an 'epidemic' of global developments.[54] Notably these developments are not yet grounded in domestic law in the UK with the requirements under the Modern Slavery Act 2015 (mentioned above) focused on disclosure rather than the more onerous (and topical) due diligence obligations.

Covid-19 put pressure on both states and businesses to maintain compliance with the UNGPs and other international initiatives. Policymakers responded with guidance to states and business on

52 Anna Beckers, 'From corporate personality to corporate governance: the transformation of international human rights protection in corporate governance structures' in Nehal Bhuta and Rodrigo Vallejo (eds), *Human Rights and Global Governance* (Oxford University Press 2020)

53 Chip Pitts, 'The United Nations "Protect, Respect, Remedy" Framework and Guiding Principles' in Dorothee Baumann-Pauly and Justine Nolan (eds), *Business and Human Rights: From Principles to Practice* (Routledge 2016). Other relevant initiatives are outlined above (n 3). Specific sectoral guidance also informs, including: OECD Due Diligence Guidance for Responsible Supply Chains of Miners from Conflict Affected and High Risk Areas; OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector; OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Industry; OECD–FAO (Food and Agriculture Organisation) Guidance for Responsible Agricultural Supply Chains; Responsible Business Conduct for Institutional Investors; Practical Actions for Companies to Identify and Address the Worst Forms of Child Labour in Mineral Supply Chains. The OECD on Covid: Covid-19 and Responsible Business Conduct. The ILO on Covid: ILO Policy Brief (May 2020) 'A policy framework for tackling the economic and cultural impact of the Covid 19 crisis' 2. The Sustainable Development Goals (SDGs), particularly goal 17, para 65, where there is a call on 'all businesses to apply their creativity and innovation to solving sustainable development challenges' and commits states to 'foster a dynamic and well-functioning business sector whilst protecting labour rights and environmental and health standards in accordance with international standards and agreements and other ongoing related initiatives such as the Guiding Principles on Business and Human Rights'.

54 Ciarán O'Kelly and Ciara Hackett, 'Ten years of the United Nations Guiding Principles on Business and Human Rights: much done, much more to do' (2021) (*QPOL* 23 June 2021).

the key considerations for action.[55] Guidance was very general. For business, considerations included continuing to meet due diligence reporting requirements and that international laws would continue to be respected.[56] Guidance to states (and to a lesser extent business) focused on the requirement to ensure access to remedy for victims of corporate human rights impacts. The overarching message was that it is 'critical that [the UNGPs] are not put aside now'.[57] This is, and was, problematic. Emergency Covid-19 legislation (both within UK and Northern Ireland) restricted (and in some instances suspended) human rights. This meant that states failed in their duty to protect human rights. Further, the temporary closing of courts and the shift to online tribunals have meant that, for some, the pathway to remedy has been made even less accessible than before. This has been compounded with huge case lists and waiting times before the courts. With the state failing to meet its obligations (for whatever reason(s)), its role as an encourager/enforcer of business responsibilities is compromised. It is, and was, a challenge to require business to continue to respect, within their operations and supply chains, those rights that the state has suspended.

Emergency Covid-19 legislation suspended certain rights within Northern Ireland. Notably, in many cases it was local businesses that assisted local communities in the distribution of food and medications during the lockdown periods. Business interaction with human rights became less about disclosing specific interactions with human rights and more about being community leaders in a time of crisis. Whereas disclosure and, latterly, due diligence are central components of any BHR framework, the Northern Ireland experience shows how businesses (and particularly, micro ones and SMEs) can move *beyond* disclosure, and *even* due diligence (and the multinational-orientated guidance of the UNGPs, for instance) and become full participants of the social life of (in this case) Northern Irish society. This is an important example of business-led engagement with human rights, filling a lacuna within the current legal and regulatory framework. The structure of the Northern Irish business landscape, in its social context, means that this type of activity is perhaps not easily recognisable or identifiable as CSR either, rather it is in supporting the local community from which these businesses draw employees, suppliers and customers. Whereas this 'gap filling' by business is an important opportunity for BHR generally,

55 UN OHCHR, 'Business and human rights in times of Covid' (October 2020).

56 Principle 12, UNGPs (n 3 above).

57 Statement by the UN Working Group on Business and Human Rights (2020), 'Ensuring that business respects human rights during the Covid-19 crisis and beyond: the relevance of the UN Guiding Principles on Business and Human Rights' (29 April 2020).

challenges persist. The gaps in the local, domestic, and international infrastructure create and sustain an environment for impacts to occur. We identify two specific areas in the next section.

BHR: AREAS OF CONCERN

We have above considered the case of Northern Ireland as a contextual underpinning for the broader themes that emerge in this article. Exploitations and human rights impacts do occur within Northern Ireland. These might mirror the exploitations that occur elsewhere, but in a way unique to the region's geography and socio-economic context. The character of Northern Irish business has meant that certain areas are more prone to impacts than others. When Covid-19 struck, BHR as a field focused on key areas of concern. Northern Ireland is and was no different. However, where divergences occur lies, we believe, in *how* these areas are areas of concern in Northern Ireland, and how the Northern Irish Executive (and private governance) might reasonably respond to these concerns going forward. Specifically, we are keen to reference workers' (and supply-chain workers') rights in the context of the Covid-19 pandemic and recovery.[58] By doing so, we are able to identify the prospect of an holistic BHR framework (explored in the penultimate section). If business respect for human rights and state human rights protections are to advance, a comprehensive approach to providing access to remedy is required. 'Actually lived' BHR narratives, at least in the narrow sense, approach remedy, not in the compensatory frames understood by lawyers, but in terms of 'community engagement'. It is this latter perspective of 'remedy as engagement' which we take below, considering employees/contractors, supply chains and, finally, proposed routes to remedy.

Workers' rights

Covid-19 impacted all forms of work. How, where and when we work has changed considerably and permanently. After the pandemic in the UK (and further afield), a secondary economic crisis has been compounded by a 'cost of living' emergency. In Northern Ireland, seasonal workers, tourism, childcare and hospitality sectors have been most notably

58 Other areas such as Human Rights and Environmental Defenders may be of more interest in the broader business and human rights field, but these issues are more salient in examining the interplay of business, government and civil society in Northern Ireland.

affected.[59] Conversations that initiated with Covid-19 need to continue to ensure that post-pandemic recovery enhances existing protections within the workforce: '[a]s governments are scrambling to extend a financial lifeline to struggling businesses, they should also remember the need to build and protect resilience for workers and to ensure that they put human rights at the centre of responses'.[60]

Globally, Covid-19 highlighted several secondary impacts such as discrimination. Groups declared to be most at risk are women, those from ethnically diverse backgrounds, persons with a disability and those from the LGBTQIA+ community. As stated above, Northern Ireland is not uniquely unique; and, thus, these groups are vulnerable within Northern Ireland also. Beyond, the legacy of conflict also creates other 'at risk' groups (both within and in addition to the 'at risk' groups identified) – victims *of* conflict and those impacted by intergenerational trauma *from* conflict. Women and those with caring responsibilities emerged as key actors who experienced trauma which impacted on their caring responsibilities.[61] This parallels the Covid-19 experience. The International Labour Organization (ILO) warned that women would continue to be particularly vulnerable post-pandemic.[62] They assumed the burden of caring and schooling responsibilities during the pandemic and tend to work in those sectors

59 62 per cent of the global workforce are working in the informal economy. See 'Impact of the coronavirus disease pandemic on contemporary forms of slavery and slavery-like practices: report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences' A/HRC/45/8.

60 Statement by the UN Working Group on Business and Human Rights (n 57 above).

61 Maggie Long, '*Derry Girls* and containment: conflict-related and trans-generational trauma in Northern Ireland' (2021) 14(1) Journal of Psychosocial Studies 3–17; Jessie Austin, 'The "ceasefire babies": intergenerational trauma and mental health in post-conflict Northern Ireland (2019) 2(1) Public Health Review 1–5).

62 ILO Director General Guy Ryder's remarks at the Global Deal Conference on Social Dialogue and the SDGs in the times of the Covid-19 pandemic: 'Social dialogue essential to any effective response to the pandemic says ILO Director-General' (ILO 26 June 2020).

most adversely impacted.[63] This may lead to an *equality regression*. The parliamentary Women and Equalities Committee launched an enquiry about the different and disproportionate impact that Covid-19 had on those with protected characteristics under the Equality Act 2010.[64] One recommendation made in oral evidence was that there must be 'a framework … using the law … to think it through. What are [the] issues, where are the groups and how do we design that in from the start?'[65] For Northern Ireland (and indeed all localities), it is imperative that identifying the issues and the relevant stakeholders adequately captures the context in which these issues might emerge.

Law's playing a reflexive role in managing the disproportionate impacts of Covid-19 and of emergencies more generally is key to BHR. That is, focus on due diligence, audit and other processes of discovery highlight BHR's turn to business knowledge frames in speaking into human rights in the corporate economy. Whether such frames can be turned towards the pandemic's impacts will require nuanced dialogue between business and states. We argue this must start with both businesses and states coming to an understanding regarding how the interaction of work with vulnerabilities and precarities is itself an agent

63 Soraya Seedat and Marta Rondon, 'Women's well-being and the burden of unpaid work' (2021) British Medical Journal 374; Kate Bahn, Jennifer Cohen and Yana van der Meulen Rodgers, 'A feminist perspective on Covid-19 and the value of care work globally' (2020) 27(5) Gender, Work and Organization 695–699; Esuna Dugarova, 'Unpaid care work in times of the Covid-19 crisis: gendered impacts, emerging evidence and promising policy responses' paper prepared for UN Expert Group Meeting, 'Families in development: assessing progress, challenges and emerging issues, focus on modalities for IYF+30'. More generally, Lourdes Beneria, 'The enduring debate over unpaid labour' (1999) 138 International Labour Review 287; Judy Fudge, 'Feminist reflections on the scope of labour law: domestic work, social reproduction, and jurisdiction' (2014) 22(1) Feminist Legal Studies 1; Silvia Federici, 'The reproduction of labour power in the global economy and the unfinished feminist revolution' in Maurizico Atzeri (ed), *Workers and Labour in a Globalised Capitalism: Contemporary Themes and Theoretical Issues* (Palgrave Macmillan 2014) 85–110. For ethnic minority groups, concerns centre round the economic effects of the crisis. For those with a disability, the accessibility of government/executive messaging is questioned. For the LGBTQIA+ community, much of the focus of the literature was on their pandemic experience rather than in the recovery stages. This centred on mental health concerns, lack of access to safe spaces and supports, and domestic abuse. See Chaka L Bachmann and Becca Gooch, LGBT in Britain. Health Report (Stonewall & YouGov 2018); LGBT Foundation, Hidden Figures: The Impact of the Covid-19 Pandemic on LGBT Communities in the UK 3rd edn (LGBT Foundation May 2020).

64 Ethnic minority groups, gendered economic impact and disability and access to services.

65 Ali Harris, 'Oral evidence: unequal impact: coronavirus (Covid-19) and the impact on people with protected characteristics' (Women and Equalities Committee 10 June 2020) HC 276.

of public health, and how a more sustainable economy will require that such inequalities be better addressed. For Northern Ireland, grappling with a public health crisis prior to the pandemic, the added pressures (both direct and indirect) on public services are profound. It is essential that this nuanced dialogue takes place to ensure the existing inequalities in the region (tied to conflict) are not perpetuated and further embedded into the local social, business and public health structures.

Workers in supply chains

Migrant workers, representing 4.7 per cent of the global labour pool, 'have been especially vulnerable to the socio-economic impacts of Covid-19'.[66] The roles that migrant workers typically find themselves in are characterised by low wages and a lack of social protections. For Northern Ireland, this can take two main forms. First, there are those who are employed in the local economy and, second, there are Northern Irish companies who may avail of migrant labour somewhere in their supply chain. Some sectors of the Northern Irish economy rely heavily on migrant labour, for example, seasonal agriculture, the agri-food industry, factories, tourism and hospitality. Whereas these migrant workers do not necessarily experience the extremes of issues of migrant workers in other regions, as discussed above, exploitations can still exist.

During Covid-19, the impact on migrant workers was profound.[67] The casualisation of labour in the most impacted sectors meant that many spent long periods of time without employment. They were trapped. Travel restrictions meant they could not return to their home countries, they may not have been able to access benefits (which in turn impacted housing and access to housing) and the expiry of visas and work permits may have caused a rise in undocumented workers in Northern Ireland. These workers are most at risk of falling within cycles of modern slavery where protections under existing legislation and strategies in Northern Ireland are limited. Meeting the complex needs of these groups becomes even more urgent in the context of economic entrenchment and recession. Increasing economic pressures see risks to already marginalised communities, and opportunities for unscrupulous or struggling employers grow in tandem. Again,

66 David Koh, 'Migrant workers and Covid-19' (2020) 77(9) Occupational and Environmental Medicine 634–636; Andrian Liem, Cheng Wang, Yosa Wariyanti, Carl A Latkin and Brian J Hall, 'The neglected health of international migrant workers in the Covid-19 epidemic' (2020) 7(4) The Lancet Psychiatry e20.

67 European Commission, 'Overcrowded reception centres and informal settlements make migrants vulnerable to Covid-19' (17 March 2020); Sali Tripathi, 'Companies, Covid-19 and respect for human rights' (2020) 5(2) Business and Human Rights Journal 252–260.

beyond questions of inherent dignity, economic resilience favours less exploitative working and living conditions.

Remedy

The unique selling point of BHR is the right to access an effective remedy in the case of a corporate human rights impact. This is emphasised most vigorously in Pillar III of the UNGPs. Progress in achieving this pillar is paramount: '[e]nabling access to effective remedy for rights holders when abuse has occurred through judicial and non-judicial grievance mechanisms, is an integral part of the State's legal duty to protect human rights'.[68] Thus, where a worker's rights have been impacted, they must have access to a remedy (judicial or non-judicial). Where a business has contributed to any negative impact, it must mitigate and seek to remedy it.[69] Conversations on the UNGPs' development, and any future treaty on BHR, have emphasised the importance of strengthening this pillar, clarifying '*effective* remedy' (emphasis added) and widening 'access'.[70]

Remedy need not take place in specifically 'human rights' venues, but in far more micro-level arenas, for example, employment tribunals, lower courts and arbitration proceedings. Covid-19 exacerbated the difficulties in accessing such remedies, not least because NGOs soliciting advice for those who had been wronged were disrupted and, beyond that, tribunals and courtrooms closed their doors, slowing access to justice even as institutions moved online.

From the corporate perspective, community-business engagement became more difficult. For example, typical routes to stakeholder engagement, including with those impacted within supply chains (town hall meetings etc), were either limited or suspended. Whereas other online methods of engagement are available, these suppose levels of digital literacy and access to relevant materials (eg smart phones/tablets and being in rural or remote communities).[71] There

68 See n 57 above.

69 Eg Principles 11, 13, 15 and 24, UNGPs (n 3 above).

70 Office of the UN High Commissioner for Human Rights, 'Improving Accountability and Access to Remedy for Business and Human Rights Abuses: A submission from the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the Third Revised Draft of the legally binding instrument (LBI) to regulate in international human rights law, the activities of transnational corporations and other business enterprises' (2021).

71 Faith E Fletcher et al, 'Covid-19's impact on the African American community: a stakeholder engagement approach to increase public awareness through virtual town halls' (2020) 4(1) Health Equity 320–325; Shauntice Allen et al, 'Covid 19's impact on women: a stakeholder-engagement approach to increased public awareness through virtual town halls' (2020) 26 (6) Journal of Public Health Management and Practice 534–538.

were knock-on implications of closure of services such as libraries and community organisations. The switch to online provision saw some disenfranchised, including the elderly (lack of digital literacy), those in lower socio-economic areas and those with no access to the internet (particularly supply chains and less developed nations). Losing voices is detrimental to communities and businesses, so it is imperative that they and civil society organisations work to ensure that messages are being heard.[72]

Post-pandemic, an opportunity exists for business to rethink its public presence, not least in the interplay of dialogue and consultation with remedy and other less advantageous (to firms) interactions with stakeholders. There is a risk that the post-pandemic world will see less inclusive forms of corporate engagement combine with reduced access to remedy. Conversely, the pandemic highlighted more constructive approaches. The crisis saw a move beyond the business–state dichotomy within the BHR movement. It saw potential for BHR to be more than the types of arbitrary HRDD it has come to be characterised as. In Northern Ireland this was evidenced in the shared response to delivering aid. Local businesses and local government worked with community organisations to distribute groceries, medication and so on. This opened new lines of communication and engagement.[73] Communication and engagement will be, and are, key to facilitating access to remedy where, for example, due diligence has failed. With courts closed (or limited) or facing huge backlogs, justice may seem further removed from harms. Those impacted by business failure to respect human rights including (and beyond) workers and those in the supply chain need to feel supported.

A FRAMEWORK FOR FUTURE-PROOFING BUSINESS AND HUMAN RIGHTS IN NORTHERN IRELAND

Macchi advocates the reading of law through a contextualised lens, considering the interrelated nature of social phenomena. Similarly, we advocate thinking both through and beyond the UNGPs, approaching the interrelation of health and economy within the conceptual frames

72 Generally, Kee-Hong et al, 'Does CSR matter in times of crisis? Evidence from the Covid-19 pandemic' (2021) 67 Journal of Corporate Finance 101876; on social distancing, see: Catherine Tobin, Georgia Mavrommati and Juanita Urban-Rich, 'Responding to social distancing in conducting stakeholder workshops in Covid-19 era' (2020) 10(4) Societies 98.

73 For an overview of collective community responses to Covid-19 including volunteer community groups, GAA Orange Order, Soccer Clubs, Rugby Clubs, Women's Institute and other organisations, see Northern Ireland Council for Voluntary Action (Covid 19 Response).

provided by BHR in its broadest regulatory sense. This will help us understand how the complex mix of economic vulnerability, systemic resilience and health equity interact. The approach Macchi advocates is key to understanding law's role in addressing this mix and has characterised our approach in the sections above.

As Northern Ireland and other jurisdictions loosened pandemic restrictions, talk of 'return to normality' gave way to a realisation that no return to an 'old normal' was possible. While immediate concerns took over, the deeper question remains regarding how a post-pandemic phase ought to be assembled. In Northern Ireland this is especially urgent given broader political and economic uncertainties associated with Brexit, the climate emergency, energy supply-chain vulnerabilities and so on. This is compounded by the legacy of conflict on health and development, and the ongoing failures of government including, at the time of writing, the ongoing dysfunction in the Northern Ireland Executive.

It is impossible to predict which path recovery might take. As with all shocks, immediate responses – or absence thereof – only constitute part of the overall picture. Taking a parallel policy track to the *status quo* in the immediate term cannot address changes, for instance, to individuals, to work, or to the economy wrought by the pandemic. Nor does it address any lacunae the pandemic exposed.

Our discussion of Northern Ireland's BHR landscape above underlines the provisions that already exist in sustaining an economy free of exploitation. A question arises now regarding, first, how patterns of vulnerability might evolve in a context of medium-term recovery from the pandemic and, second, how those patterns might be reflected in economic life over a longer term. How law reflects and encodes the recovery will be a key challenge.

In this context, and for several reasons, the *status quo* is insufficient. We name three such reasons here.

Engagement between business, community and state

The Northern Ireland Executive reacted to the unfolding economic crises post-pandemic with initiatives to stimulate the economy and protect business. However, a long recovery beckons, especially in the context of the differential impacts of the pandemic period itself on, for instance, those suffering long-term health impacts from the virus, or on young people who suffered delayed skills and social development. Absent additional support, economic and social recovery will remain fragile. This fragility might not be apparent in headline economic figures, but instead in withdrawal from labour markets, lower productivity, and higher absences from work, all of which would

reflect a greater disconnect between some groups and economic life. In Northern Ireland, this takes on an additional gloss given the post-conflict dispensation: economic displacement has had a long history of exacerbating the conflict because of direct frustration with a lack of opportunity and because of perceived differential impacts from poverty across communities. Beyond, this has been compounded by the collapse of the Northern Ireland Assembly, continued uncertainty regarding Northern Ireland's place in the EU post-Brexit, a UK-wide 'cost of living' crisis, a draconian budget and a series of cuts sanctioned by the Secretary of State for Northern Ireland, Chris Heaton Harris.

BHR frameworks seek to mobilise business into mainstreaming human rights perspectives. At the same time, they assert a perspective on the role that the corporate economy plays in people's lives. The external focus on due diligence for harms arising from the impact of business operations on people's lives has been matched by business discourses focusing on relationships between workers and their employers.[74] While this might be motivated by internal processes providing an easy route to demonstrating human rights credentials, it also reflects a sense that BHR is concerned with people's participation in economic life. The BHR focus on global supply chains ought not to distract from the fact that legitimation and other questions arise at the local level as well. Conditions for engagement with economic life are a matter both for business *and* for regulators. This suggests that new kinds of regulatory design are required, something for which BHR frameworks are well suited.

They are well suited for such design conversations because they propose human rights, not solely as a constraint on corporate capitalism, *but as a common framework within which business, state and stakeholder interests can play out*. The focus on due diligence and corporate engagement within BHR, while weaker than direct state intervention, allows for greater sensitivity to contingent conditions. Corporations and their regulators can negotiate context-specific BHR frameworks and, where regulatory scrutiny is sufficiently robust, a more ground-level approach can ideally be defined and devised.[75]

74 See, for instance, Ken McPhail and Carol A Adams, 'Corporate respect for human rights: meaning, scope, and the shifting order of discourse' (2016) 29 Accounting, Auditing and Accountability Journal 650.

75 Marianna Leite, 'Beyond buzzwords: mandatory human rights due diligence and a rights-based approach to business models' (2023) 8(2) Business and Human Rights Journal (First View) 197–212.

Exploitation

For many of those who remain engaged with economic life, a rebalancing of employer demand and employee need make it likely that patterns of work will not return to pre-pandemic norms. People may work remotely more often. The existing turn to platform or 'gig' work (in hospitality, for example) may accelerate and even displace previous working patterns and employers.[76] Beyond that, those who are struggling may be driven to accept lower conditions or join the informal sector to a greater degree than would have been the case absent the Covid-19 economic shock. Across the north Atlantic economies, including in Northern Ireland, the balance of power may shift not only towards employers but also *towards exploitation*.

While it might be the case that labour market dynamics will see employers and employees striking a balance over working from home, the overall environment will require a regulatory response that goes beyond the *status quo*. In addition to scrutiny of platform worker conditions, regulators will have to be cognisant of new vulnerabilities that will arise with distance work: wage theft, tax failings and outright fraud. In these circumstances labour market enforcement can be accompanied by private supply-chain due diligence regulations, something that many Northern Ireland firms are likely to be familiar with if not already actioning. The question as always with BHR relates to the level of regulatory oversight and scrutiny required to ensure that private due diligence processes are in fact set up to support public ends.

Northern Ireland's failure to implement the Equality Act 2010 means that the state has more to do to maintain the core values of dignity and respect in the world of work post-lockdown. Bailouts or financial incentives to businesses must ensure protections for those vulnerable groups. Further, we recommend that an assessment be carried out on the response by businesses to Covid-19 and their employees, to ensure marginalised groups are being adequately protected.

The specific conditions that prevail in Northern Ireland suggest that particular care would be required on some aspects of these general challenges. A combination of the legacy of conflict, the vulnerability of migrant labour and Northern Ireland's complex border combined with a small-scale agricultural economy suggests that the region is particularly exposed to and ripe for labour exploitation. First, reform

76 See Anthony Larsson and Robin Teigland (eds), *The Digital Transformation of Labor: Automation, the Gig Economy and Welfare* (Routledge 2020); Mark Graham, Isis Hjorth and Vili Lehdonvirta, 'Digital labour and development: impacts of global digital labour platforms and the gig economy on worker livelihoods' (2017) 23 Transfer: European Review of Labour and Research 135.

in labour and modern slavery regulation and enforcement may take on additional urgency. Given the difficulties of regulatory scrutiny, however, a due diligence framework soliciting accounts from SMEs might help mediate between the conduct of relatively 'illegible'[77] small-scale contributors to supply chains and state enforcement mechanisms.

Environment

Finally, any investment and business activities have their own environmental effects, contributing to the social risks from the pandemic. Such effects can be direct or indirect (emissions) and create impact on both a global and local scale, on environments and workplaces.

Northern Ireland is the last part of the UK to legislate for climate change, after a long period of delay,[78] the most recent legislation being enacted in June 2022 as part of a short-lived chain of often-competing Bills.[79] Understanding global climate and its mitigation through narrow legislative frames fails to recognise the diversity of impacts that climate change may have, including on human health. Aspects of the climate emergency have intersected with and hampered pandemic relief.[80] Moreover, climate change is likely to exacerbate and intensify health risks from pandemics and other disease outbreaks. Links have long been drawn between pandemic risks and climate change, for instance, habitat loss, human–animal interactions, and broader health impacts of climate stresses.[81] This concern has been heightened in

77 James C Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press 1998).

78 Committee on Climate Change, 'The appropriateness of a Northern Ireland Climate Change Act – Northern Ireland report' (Committee on Climate Change 2011); Department of Agriculture, Environment and Rural Affairs, Discussion Document on a Northern Ireland Climate Change Bill (DAERA Consultation Paper 2020).

79 Climate Change Act (Northern Ireland) 2022.

80 Carly A Phillips et al, 'Compound climate risks in the Covid-19 pandemic' (2020) 10 Nature Climate Change 586.

81 See Diarmid Campbell-Lendrum, A Pruss-Ustun and C Corvalan, 'How much disease could climate change cause?' in A J McMichael et al (eds), *Climate Change and Health: Risks and Responses* (World Health Organization 2003); Katrin Kuhn et al, 'Using climate to predict infectious disease epidemics' (World Health Organization 2005).

the context of the pandemic,[82] directly linking abstracted global risk to concrete local impacts. While Northern Ireland may not be a large emitter, it is one, especially in commercial activities such as agriculture. The global and the local are as such tied and can be understood in the context of BHR.

While global pandemic risks expose people in Northern Ireland, other environmental issues present themselves at a local level: emissions from transport and industry; and workplace patterns that produce stress, or other health impacts, produce pandemic risks of individual vulnerabilities. Workplace impacts, in addition to traffic and the like, again suggest the need to understand BHR in the round – in Macchi's holistic sense.

CONCLUSION

BHR is experienced at the local level but regulated at a macro level. Regional and national approaches to BHR in Northern Ireland and the UK have been driven by market demands rather than centring human rights. This has led to a 'light touch' engagement with basic BHR requirements, prioritising disclosure over due diligence, with due diligence limited to private-sector governance rather than mandated by legislation. Further, the failure to engage with the local interactions of business and human rights does a disservice to the potential of an holistic HRDD to achieve a true community-level partnership. Northern Ireland is a case in point. It is characterised by its history, the legacy of conflict and its positioning as the land border between the UK and the EU (Republic of Ireland). Its economic character is also worth noting – far from the lofty heights of the London Stock Exchange, Northern Ireland's business is built around micro and

82 Kathryn J Bowen and Kirstie L Ebi, 'Governing the health risks of climate change: opportunities for regeneration in an age of planetary health' (2020) 46 Current Opinion in Environmental Sustainability 1; updating Kathryn J Bowen and Kristie L Ebi, 'Governing the health risks of climate change: towards multi-sector responses' (2015) 12 Current Opinion in Environmental Sustainability 80. See also Colin D Butler, 'Pandemics: the limits to growth and environmental health research' (2020) 46 Current Opinion in Environmental Sustainability 3; Julien Terraube and Álvaro Fernández-Llamazares, 'Strengthening protected areas to halt biodiversity loss and mitigate pandemic risks' (2020) 46 Current Opinion in Environmental Sustainability 35; see also the 2022 report from the Intergovernmental Panel on Climate Change, citing the 'diverse adverse impacts' of climate change on 'water security and food production, health and well-being, and cities, settlements and infrastructure': Hans-O Pörtner et al, Climate Change 2022: Impacts, Adaptation and Vulnerability: Summary for Policymakers (Intergovernmental Panel on Climate Change Sixth Assessment Report 2022) 35.

SMEs in predominantly the agricultural sector. Covid, and recovery post-Covid, throws the character of Northern Ireland and its business into sharp relief. Recovery and 'building back better' cannot be a one-size-fits-all approach. Recovery presents an opportunity to build on the successes of the pandemic (in terms of business engagement) and to look for the potential evolution of BHR to develop beyond disclosing impacts towards a more rights-centred holistic approach. This means integrating the respect of human rights into all aspects of business engagement – driving towards private governance as much as towards state regulation. In suggesting a framework for future-proofing BHR in light of Covid and considering the peculiarities that make Northern Ireland Northern Ireland, we focused on engagement, exploitation and environment.

We make four main concluding points. First, context is crucial if BHR is to develop. It is not enough to have sweeping principles and guidelines if there is no sense of how BHR is lived on the ground. Related, second, local experiences and interpretations of BHR are as important as international guidelines. It is the local environment that attracts the investment; therefore, it must be the local environment that helps shape the BHR agenda and practice within a particular region. Third, Covid demonstrated how local areas experienced a global event in different (but the same) ways. For Northern Ireland, Covid demonstrated how conflict had already impacted on public health and how this post-conflict legacy must be considered in all aspects of Northern Irish life. Last, holistic, rights-based BHR provides an opportunity to take context and locality into consideration. An holistic approach to crisis recovery can help future-proof the economy and ensure that recovery champions a better society. Recovery from Covid-19 presents an opportunity to perceive the interrelated vulnerabilities to pandemics and the human rights impacts those vulnerabilities have. A recovery promising a more equitable distribution of benefits and enhanced social as well as economic development would also have the merit of driving Northern Ireland towards greater public health resilience.