

**European Union**

**UNITED NATIONS
HUMAN RIGHTS COUNCIL**

**Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights**

**4rd session (15-19 October 2018)**

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**"Panel: The voices of the victims"**

**Intervention by the European Union**

**Geneva, 19 October 2018

- CHECK AGAINST DELIVERY -**

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Mr. Chairperson-Rapporteur,

The plight of victims is an appeal to all of us to respond in an effective manner. Those who have suffered human rights violations by States as well as those that are victims of abuses by non-state actors have a right to access justice and a right to effective remedy. More and more voices stress the need to address abuses connected to the activities of business enterprises both of domestic enterprises as well as companies headquartered abroad. Civil society organisations, human rights defenders, independent media and national human rights institutions have an important role in enabling the voices of victims of human rights violations and abuses to be heard. It is unacceptable that any of those speaking out on behalf of the victims become subject to harassment, persecution and retaliation, and have to risk their own lives as they work for the promotion and protection of human rights. Many human rights defenders indeed face specific risks when they try to help victims of abuses connected to activities of enterprises.

States need to set up measures to support and protect human rights defenders and ensure that the legitimate and peaceful activities of human rights defenders are not obstructed. There are clear provisions in the UN Guiding Principles on Business and Human Rights, for instance in the [commentary to Guiding Principle 26](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf): States should *"ensure that the provision of justice is not prevented by corruption of the judicial process, that courts are independent of economic or political pressures from other State agents and from business actors, and that the legitimate and peaceful activities of human rights defenders are not obstructed."*

Several interventions this week raised concerns about the lack of specific provisions on human rights defenders or the lack of a gender perspective in the "draft legally binding instrument". While the EU reserves its position on the “draft legally binding instrument” as well as the “draft optional protocol”, we believe that any possible legally binding instrument should reaffirm that States have the obligation to respect, protect and fulfil the rights of all individuals, including human rights defenders in accordance with the UN Declaration on Human Rights Defenders. Any legally binding instrument should also include provisions for groups of persons often disproportionately affected by abuses related to business activities such as women, persons with disabilities, children, indigenous peoples, or ethnic or religious minorities.

The support to human rights defenders is one of the key priorities of EU human rights agenda. With the European Instrument for Democracy and Human Rights, the EU has put in place a comprehensive mechanism to support human rights defenders at risk, entitled ['Protect the Defenders'](https://www.protectdefenders.eu/en/index.html). Activities under the Mechanism include: urgent support, including physical/digital protection, legal support, medical support, trial and prison monitoring, a permanent helpline for human rights defenders (24h/7); medium-term support including monitoring of the situation of human rights defenders situation, early warning, reinforcement of capacities, trainings on risk prevention and security; and long-term support including support to national networks, advocacy and lobbying. In addition, the European Commission supports specific projects on business and human rights and can provide small grants on an ad hoc basis to human rights defenders in need of urgent support. This support has regularly been used for human rights defenders at risk because of corporate human rights abuses.

The EU also confirmed on many occasions its commitment to the UN Declaration on the Rights of Indigenous Peoples. Action should also be taken to address the killings, criminalisation, threats and violence against indigenous peoples and their leaders, against individuals as well as to human rights defenders, in the context of land and natural resources, in the protection of the environment, biodiversity and the climate.

On the rights of victims, we would like to elaborate on some of the key provisions in EU law, as they are relevant to the debates held here. The EU Charter of Fundamental Rights in its Article 47 guarantees the right to an effective remedy and fair trial and provides the possibility of legal aid to individuals who lack sufficient resources where such aid is necessary to ensure effective access to justice. In addition, it foresees that everyone is entitled to a fair and public hearing within reasonable time by an independent and impartial tribunal as well as the possibility of being advised, defended and represented. More specifically, concerning victims' rights in the context of criminal proceedings, the Victims' Rights Directive (2012/29/EU) is the EU's major instrument providing for a set of binding rights for all victims of all crimes. When it comes to victims of business related human rights violations, the Victims' Rights Directive is applicable to situations which are qualified as crimes under national laws.

In such cases, the Directive significantly improves access of the victims to justice, including to remedies. In particular, it establishes a set of procedural rights for victims of crimes, including victims' right to be heard, right to challenge a decision not to prosecute, rights to legal aid in accordance with national law and a right to decision on compensation from the offender in the course of criminal proceedings. In particular, the Directive provides in Article 16 the possibility of facilitating victims’ civil claims in criminal procedures: according to this provision, the victims have a right to decision within a reasonable time on compensation from the offender in the course of except where national law provides for such a decision to be made in other legal proceedings. In addition, the point 2 of this provision should be also mentioned in this context as it states that Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

We would also like to draw attention to the ongoing project by the [European Union Agency for Fundamental Rights](http://fra.europa.eu/en/project/2018/business-and-human-rights-access-remedy-improvements) to look at obstacles and promising practices in relation to access to remedies for victims of business-related human rights abuses. By analysing complaints mechanisms in selected EU Member States, this research maps what hinders and what facilitates access to remedies. This is one of the concrete illustrations of progress made since the clear directions of work set out in the [Foreign Affairs Conclusions of 20 June 2016 on Business and Human Rights](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/council_conclusions_on_business_and_human_rights_foreign_affairs_council.pdf).

Mr Chairperson-rapporteur,

We are thankful to civil society for the several events organized in parallel of this session as it is important that civil society continues documenting concrete cases and bringing testimonies to the attention of the international community. The annual Forum on Business and Human Rights continues to also be an important avenue to highlight cases, as well as positive examples where business enterprises engage with civil society organisations and human rights defenders to prevent abuses and ensure access to remedy. We look forward to the forthcoming Forum on Business and Human Rights on 26-28 November as a new opportunity to share experiences from all regions and identify concrete means for further progress. Multi-stakeholders initiatives such as the International Code of Conduct Association and the newly established Centre for Sport and Human Rights provide innovative ways to ensure access to an effective remedy.

We heard this week a reaffirmation of the global consensus on the UN Guiding Principles on Business and Human Rights as the existing authoritative framework for all States and stakeholders to make immediate and tangible progress to better prevent business-related abuses, and ensure access of victims to remedy. States must implement their existing obligations, and companies need to fulfil their responsibility to respect human rights. We also have a collective responsibility to make full use of the findings and recommendations of the OHCHR-led Accountability and Remedy Project on judicial mechanisms in cases of business-related human rights abuse and State-based non-judicial mechanisms. We are pleased with the continuation of this project with a focus on non-State-based grievance mechanisms thanks to the leadership of the core group on Business and Human Rights (Argentina, Ghana, Norway, Russian Federation) and the adoption by the Human Rights Council in July 2018 of resolution 38/13. We also need to fully use the tools developed or being developed by the UN Working Group on Business and Human Rights, including its forthcoming guidance for States and business on action to safeguard and support human rights defenders in line with the UN Guiding Principles on Business and Human Rights.

We also heard this week that the UN Guiding Principles are widely recognized as a foundation for further international legal developments in Business and Human Rights. The question remains open on how to build consensus on further international legal developments. The EU takes note that a number of States are not participating in this process, and has listened carefully to the different views expressed this week. We witness a great variety of views from States regarding the “draft legally binding instrument”, and expectations to rethink the way forward on process to allow for a meaningful and inclusive discussion. We heard the views expressed by all stakeholders, including business, trade unions and civil society.

Mr. Chairperson-Rapporteur,

Discussions this week have also shown that many have come to support this process out of concern about the negative impact of globalization and of concerns that States will not live up to the ambitious objectives as set out in the 2030 Agenda for Sustainable Development. Indeed, an ambitious goal:[*"*Transforming our world"](https://sustainabledevelopment.un.org/post2015/transformingourworld). As we stated at the opening of this session, the European Union is committed to a meaningful and tangible progress on Business and Human Rights as this agenda is connected to wider issues, linking the promotion and protection of human rights to other global issues: trade, investment, environment, social and labour protection, tax evasion, corruption, and the list is long. In short, collectively, we need to harness globalization. The EU is committed to the promotion and the protection of human rights at home and abroad and we are committed to [mainstreaming human rights](http://www.consilium.europa.eu/en/press/press-releases/2015/07/20-fac-human-rights/) into all external aspects of EU policies in order to ensure better policy coherence.

In closing, we need to respond to the legitimate expectations of victims of business related activities. This requires a collective endeavour to ensure access to justice and effective remedy; and a collective endeavour to effectively prevent further abuses connected to business-related activities. In light of these global challenges, the European Union stands ready and committed to continue working together with all States, business associations and enterprises, civil society organisations and human rights defenders.

I thank you Mr. Chairperson-Rapporteur.