



European Union

**UNITED NATIONS
HUMAN RIGHTS COUNCIL**

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

3rd session (23-27 October 2017)

"Panel: the voice of the victims"

Intervention by the European Union

Geneva, 27 October 2017

- CHECK AGAINST DELIVERY -

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Mr. Chairperson-Rapporteur,

I have the honour to speak on behalf of the European Union.

All victims need to be heard. 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. There are more and more voices calling for 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. Human rights defenders indeed face specific risks when they try to help victims of abuses connected to activities of enterprises. During the last Forum on Business and Human Rights, we were particularly touched by the testimony of the daughter of murdered human rights defender Berta Carceres. The EU calls for a thorough, transparent and expedite investigation into this and all other killings.

The testimonies given by victims remind us that much more remains to be done across all regions to implement existing human rights obligations. Current discussions should not serve as an excuse to avoid providing remedy for victims waiting for justice now. The provision of effective remedy cannot wait. Let me quote the commentary to UN Guiding Principles on Business and Human Rights number 26. 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."¹ This is one of the several provisions in the UN Guiding Principles recalling the duties of States and the responsibilities of business.

We cannot emphasise enough that States must implement existing obligations and this week's discussion raises some legitimate questions. How can victims expect to have access to justice and to remedy in cases of abuses related to business activities in a State where the legislation fails to comply with existing international human rights law? In a State where the judiciary system is not independent? In a State where corruption impacts negatively on the fulfilment of all human rights? If a new legal instrument was to be created why would victims believe that those States currently failing to protect human rights would implement new obligations?

Mr Chairperson-Rapporteur,

Commitment to the promotion and the protection of human rights at home and abroad is a priority for the European Union and we are committed to mainstreaming human rights into all external aspects of EU policies in order to ensure better policy coherence². The Business and Human Rights agenda is indeed one of the areas requiring coherence between what we do at home and abroad. Much is being done to strengthen regulation and guidance at the EU level and by EU Member States level; much is being done to work with States from across regions. At the heart of our efforts is our call on "all business enterprises, both transnational and domestic, to comply with the UN Guiding Principles, the ILO Tripartite Declaration and the OECD Guidelines, inter alia by integrating human rights due diligence into their operations to better identify, prevent and mitigate human rights risks"³. We also recognize the potential for improved cooperation between States in cross-border cases. At the UN level, we see meaningful progress in the directions of work set out by UN Human Rights Council resolution 32/10 on "Business and Human Rights: improving accountability and access to remedy": this resolution presented by the core group on Business and Human Rights (Argentina, Ghana, Norway, the Russian Federation) sent the needed signal and commitment from all States that effective and pragmatic steps can be taken without delay to ensure accountability and access to remedy. It is now for all of us to make the best possible use of the

¹ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

² <http://www.consilium.europa.eu/en/press/press-releases/2015/07/20-fac-human-rights/>

³ <http://www.consilium.europa.eu/en/press/press-releases/2015/07/20-fac-human-rights/>

OHCHR-led Accountability and Remedy Project and several work streams of the Working Group on Business and Human Rights.

The Business and Human Rights agenda is also one such area, which requires coherence across our policies in various areas. We have set out clear objectives for ourselves to incorporate human rights in impact assessments for EU sectoral policies such as trade and development cooperation; to address our responsibilities as commercial actors (e.g. in public procurement) and when supporting or partnering with businesses (e.g. through export credit, trade promotion, or subsidies for the private sector). We are also supportive that International Financial Institutions (IFIs) ensure human rights compliance in their programme support and that their grievance mechanisms operate in line with the UN Guiding Principles on Business and Human Rights⁴.

Much has been said this week regarding rights and obligations of investors. These legitimate issues are being discussed in other forum, but it may be worth recalling two important points: Nothing precludes a sovereign State from imposing obligations on an investor in its territory. Fully aware of concerns raised by some investment disputes in the past, we have been fully engaged in a comprehensive process of reforming investment agreements. We are actively participating in in-depth discussions in this respect at the multilateral level, more precisely in UNCTAD and UNCITRAL.

Mr Chairperson-rapporteur,

Discussions this week have shown that many have come to support this process out of concern about the negative impact of globalization; 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"⁵. We are fully aware of these concerns and they must be ways to alleviate them. One such way is to ensure that the UN Guiding Principles are fully implemented as part of the implementation of the 2030 Agenda. At the Forum on Business and Human Rights in 2016, former UNSRSG John Ruggie invited business, and all of us, to focus on the relationship between the Sustainable Development Goals and the UN Guiding Principles on Business and Human Rights. His proposition to business as well as to

⁴ <http://www.consilium.europa.eu/en/press/press-releases/2015/07/20-fac-human-rights/>

⁵ <https://sustainabledevelopment.un.org/post2015/transformingourworld>

all other actors is that *"respect for human rights, respect for the dignity of every person, is at the very core of the people part of sustainable development [...] and is also the key to ensuring a socially sustainable globalization, from which business stands to be a major beneficiary"*⁶. Some business enterprises, including European companies, lead by example in the way they identify, prevent and mitigate human rights risks. Needless to say, much more remains to be done by all enterprises worldwide to meet their responsibility to respect human rights. This is a positive and forward looking agenda.

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. The European Union stands ready to continue working to confront this global challenge together with all States, enterprises, civil society organisations and human rights defenders.

I thank you Mr. Chairperson-Rapporteur.

⁶<http://www.ohchr.org/Documents/Issues/Business/ForumSession5/Statements/JohnRuggie.pdf>