

Check against delivery

Opening of the 4th Session of the OEIGWG in charge of the elaboration of an international legally binding instrument on transnational corporations and other business enterprises, with respect to human rights



Opening Remarks by Ms. Kate Gilmore

United Nations Deputy High Commissioner for Human Rights

15 November 2018, 10:00, Palais des Nations

Room XX, Geneva

Excellences, Ladies and Gentlemen,

It is my privilege to hereby declare open the fourth session of the Open-ended Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights.

[GAVEL!]

May I start by congratulating the delegation of Ecuador for the release of a draft of the hoped for legally binding instrument and, more recently too, a draft optional protocol which focuses on mechanisms of access to remedy for victims of human rights abuses in the context of business activities. These draft texts mark a key milestone and provide a welcome basis for the start of substantive negotiations.

To advance effective prevention, protection and remedy for business-related human rights violations, it is crucial that the proposed treaty be rooted in the lived experiences of those who suffer most at the hands of transnational corporations' activities. It must place people and their human rights at its center.

In pursuit of this humanizing enterprise, we should be aware that business-related human rights abuses are much like other human rights abuses: it is the impact of the actions of the relatively powerful on the relatively powerless that we seek to address.

Such impacts affect right holders more intensely, disproportionately, particularly where business activities feed and replicate the dynamics of structural discrimination. It is essential, therefore, that the treaty takes into account the different, often disproportionate, impacts on women's rights, for examples. The data on disappearances, unlawful killings and assassinations tells a horror story about the burden of fear, intimidation and violence associated with some business activities and borne at great personal cost by human rights

defenders and other activists, including land rights and environmental defenders, and by affected communities.

Excellencies, distinguished delegates,

As you are aware, at this early stage of the process there remains a divergence of views among States about how best to ensure corporate accountability for human rights abuses, but there is well in place a common goal – a common aspiration that corporate abuses end.

This vision and the drive for advance towards this goal owes much to civil society organizations. We are delighted to advise that a record number of civil society representatives have travelled to Geneva to join in this session (over 280 accredited representatives of CSOs). Their commitment and their faith that this indeed is an important process is further demonstrated by a record number of side-events organized in parallel of the session (16 in total). This session can be further encouraged by the welcome participation of more than 25 experts who, as panellists, will offer their independent advice as asked for by OP 6 of res. 26/9.

Excellencies, distinguished delegates, colleagues,

In this endeavour, the work undertaken to date to expand and explore the relationship between business and human rights is an asset. The UN Guiding Principles and the new treaty can be and should be mutually reinforcing and complementary. They are not alternatives to each other any more than they are competing frameworks.

The UN Guiding Principles, which provide the globally agreed framework for the respective duties and responsibilities of States and business enterprises, anticipate and should underpin any new legal instrument. In both letter and spirit, the UN Guiding Principles call for legal developments at the international, regional and national level that can effectively protect against business related human rights abuses. Likewise, the treaty process itself can

advance application of the Principles, not undermine their implementation, their contribution being essential at least until such time as a stronger normative framework is in place.

Friends,

This treaty drafting process is our opportunity to take a bold step forward for protection of human rights in the context of business activities, and, most importantly, for strengthened accountability and more effective remedy for those who are the victims of business-related activities.

The UN Human rights office is keenly engaged in efforts that serve the same purpose as we implement what are now three successive mandates received from the Human Rights Council. The first phase of our Accountability and Remedy Project, which concluded in June 2016, explored the role and use of judicial mechanisms, including in cross-border cases. The second phase, which concluded in June 2018, focused on State-based non-judicial mechanisms that are relevant for the respect by business enterprises for human rights, including in a cross-border context. In both instances, the guidance and recommended actions are designed for diverse legal systems and contexts, while being practical, forward-looking and reflective of international standards on access to remedy.

OHCHR stands ready to place at the disposal of this treaty drafting process, the wealth of expertise and insight accumulated through the Accountability and Remedy Project. The project's recommendations, which enjoy wide States' support, may be helpful in fleshing out key elements of the zero draft treaty and its draft optional protocol and useful to consideration too of how the treaty could be implemented in practice.

Excellencies, distinguished delegates, colleagues,

This is far from an easy process. Its complexities and the contrasting views to be accommodated are part of its challenge but also evidence of the significance of its opportunity. We hope that Member States and all other stakeholders too will find the vision, energy and patience to engage constructively and collaboratively throughout the forthcoming session. Whether the challenges to be surmounted are procedural or substantive we must take heart from our compelling common goal that there indeed be provided in law and in

practice, effective corporate accountability and redress for victims of abuses committed in the context of corporate and business activities.

I wish you a most productive and successful session.