**Bijlage EU interventies tijdens de vierde bijeenkomst van de Open Ended Intergovernmental Working Group (OEIGWG) inzake mensenrechten en het bedrijfsleven**

**Openingsstatement**

Mr. Chairperson-Rapporteur,

The European Union would like to thank the speakers in the opening statements. We express our appreciation to the Secretariat for its work in preparation of this fourth session.

Civil society organisations and human rights defenders worldwide are mobilized to remind the international community that more remains to be done to prevent abuses in connection with activities by enterprises, and to enable access of victims to remedy when abuses occur. We agree that more needs to be done to prevent, investigate, punish and redress adverse human rights effects of business activities. As we stated during the 3rd session of this Intergovernmental Working Group, testimonies given by victims remind us that current discussions should not serve as an excuse to avoid providing remedy for victims waiting for justice now

We also increasingly see that companies recognize the merit of taking tangible steps to ensure respect for human rights throughout their operations and to seek to prevent advert human rights impacts directly linked to their operations, products or services. Promising initiatives are also underway in the areas of trade, investment and finance.

Mr. Chairperson-Rapporteur,

The international community needs to respond in an appropriate and effective manner. We underline the word "effective" as we believe in effective multilateralism. Therefore, four years after Human Rights Council resolution 26/9 was adopted, we would have liked that the two main sponsors take genuine steps to address the concerns expressed by us and others with a view to overcoming divisions. Unfortunately, most proposals made by us or others to find ways to build consensus have not been taken into account – including the proposals to revert to the Human Rights Council to adopt a new resolution, which could have reaffirmed the mandate for the elaboration of a legally binding instrument, while allowing rethinking the best way forward on process.

We also regret that our proposals for the Program of Work of this session have not been taken on board, as they are substantive proposals. Most States and stakeholders worldwide have concerns with the footnote of resolution 26/9 restricting the scope to transnational corporations. We regret that a footnote allowing the discussions to cover all companies, and agreed by all for the second session, was not accommodated. This is not a procedural matter, but a real substantive issue. In today's globalized world, there are complex business networks and many different modes of operation between transnational corporations and a vast number of other enterprises operating at the domestic level. Covering all companies is important to ensure non-discrimination and a level playing field. Of course we could apply possible criteria of size and other characteristics, as per principle 14 of the UN Guiding Principles, and also enshrined in EU legislation. Civil society organizations and human rights defenders have documented countless cases of business-related abuses at the domestic level: is the restriction of resolution 26/9 a message that victims of such abuses would not benefit from the provisions of a new legally binding instrument?

We likewise regret that the proposal to invite Prof. Ruggie, former UN Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises and architect of the UN Guiding Principles on Business and Human Rights (UNGPs), to deliver a keynote address at the opening of this session was not accommodated – it would have been possible to accommodate a second keynote for the opening. Again, this is not a procedural matter, but a real substantive issue. An address by Prof. Ruggie would have helped us all to recall and reaffirm the global consensus around the UNGPs and their implementation, and how to build on them as a foundation for further international legal developments in Business and Human Rights. In this regard, we draw attention to the Open Letter published by Prof. John Ruggie on 9 October 2018 providing useful guidance for deliberations in this room and beyond [[‘Guiding Principles’ for the Business & Human Rights Treaty Negotiations: An Open Letter to the Intergovernmental Working Group](https://www.business-humanrights.org/en/professor-john-ruggie-provides-guiding-principles-for-the-business-human-rights-treaty-negotiations-in-open-letter)]. Is there any reason for the "draft legally binding instrument" not to refer to the UN Guiding Principles?

Despite these and other concerns, we have refrained from challenging the election of the Chair-Rapporteur or the adoption of the Program of Work as this could have potentially delayed the start of this session. We have instead come once again to convey our expectations for a transparent and inclusive process. Any Intergovernmental Working Group is expected to be chaired in line with principles set out in the UNGA Rules of Procedures and Annex I - including "impartiality", "respect for the rights both of minorities as well as majorities".

Mr. Chairperson-Rapporteur,

We would like now to make further remarks on substance. Much has been done within the EU and beyond to implement the UN Guiding Principles on Business and Human Rights, the existing authoritative framework. The UN Guiding Principles have been and remain the starting point and compass for EU engagement in the field of Business and Human Rights and unfolding their full potential through worldwide implementation remains our priority.

Within the EU we have developed a smart mix of voluntary and binding regulatory measures, at European and national level. We have developed legislation both at EU and Member States level and do not shy away from binding norms when they are needed. To mention but a few that are widely recognized at the global level, and can be potentially replicated elsewhere: the EU regulation on conflict minerals ((EU) 2017/821); the EU Non-financial reporting directive (2014/95/EU); and public procurement rules. The EU also has legislation on victims' rights granting victims access to justice. The Brussels I Regulation ((EC) No 44/2001, recast) for example enables to take European domiciled companies to European courts for damages caused and/or arising outside the Union. The Rome II Regulation establishes the applicable law for tort cases, including torts relating to human rights infringements. We can also draw on the provisions of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime. In the area of international judicial cooperation, the EU is actively participating in the work in the framework of the Hague Conference on Private International Law.

We are intensively working both internally and with partners from across regions to implement the UNGPs with a wide range of policies, project and tools. Already 15 EU Member States have adopted a National Action Plan. We are determined to work swiftly with partners across regions for the adoption and implementation of more National Action Plans. One such illustration is the ambitious project developed by the EU under the EU Partnership Instrument on Responsible Business Conduct in Latin America and Caribbean which will inter alia allow working with the governments of Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama and Peru in the establishment and/or implementation of National Action Plans. Likewise, EU Member States have been engaging with partner countries in different world regions to jointly implement measures which aim at aligning policy frameworks with the UNGPs and building relevant capacities in the social, judicial and business sectors to better realise human rights due diligence and access to remedy in very concrete forms. The recently adopted OECD Due Diligence Guidance for Responsible Business Conduct will provide support to enterprises on the implementation of the OECD Guidelines for Multinational Enterprises to avoid and address adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance that may be associated with their operations, supply that may be associated with their operations, supply chains and other business relationships.

Mr. Chairperson-Rapporteur,

The EU also welcomes the progress made at the UN level thanks to the leadership in the UN Human Rights Council of the core group on Business and Human Rights (Argentina, Ghana, Norway, Russian Federation). We would like to particularly highlight the various work streams of the UN Working Group on Business and Human Rights[[1]](#footnote-1), and the fast approaching annual Forum on 26-28 November. We thank the High Commissioner and the Office of the High Commissioner for Human Rights for the continued leadership on the Accountability and Remedy Project with findings and concrete recommendations allowing for tangible progress in the implementation of third pillar of the UN Guiding Principles on access to remedy. It is important that all these work streams at the UN level can bear fruit and that their substantive existing and future results be fully mirrored and valued also in the discussions in this session or in other formats.

We are also pleased to see progress in other initiatives such as the first Ministerial of the Alliance for Torture-Free Trade and the Political Declaration issued on 24 September 2018 in New York which, inter alia, requested the UN Secretary-General to *"establish a group of governmental experts to examine the feasibility, scope and draft parameters for a range of options including a legally binding instrument to establish common international standards for the import, export and transfer of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment."*

As discussion on possible further legal developments is planned this week, we would like to reiterate that these exchanges do not take place in a legal vacuum. The UN Guiding Principles recall a set of existing obligations. It is enough to quote the first UN Guiding Principle: *"States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication".* Full implementation of the existing human rights obligations by States to protect against abuses within their own territory and their own jurisdiction would respond to the numerous cases referenced in the context we currently discuss.

We also need to address a series of legitimate questions about implementation of current or indeed any future obligation. 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,

We believe the added value of any possible legally binding instrument should be to enhance the protection of and respect for human rights as well as to ensure a level playing field for companies globally. Therefore, it is essential for any proposal to reach sufficient traction amongst UN member states. We are aware that a number States are not in the room, and that many more are not ready to engage in negotiations in the current format. It is also important to ensure policy coherence and avoid any duplication of efforts. We have been reflecting internally about which type or format of a legally binding instrument would stand the best chance of achieving this level playing field.

On the basis of these various considerations from the EU’s perspective, we are not yet at a stage where a formal negotiating mandate could be sought to engage in this format of discussions. The EU therefore reserves its position on the draft legally binding instrument presented in this session and requests that this reservation be recorded in the report of this session. We look forward to listening to the positions expressed by all and expect that the report of the session will reflect accurately and nominally all views and positions.

In closing, the EU is committed to building on our solid set of legislation and policies and to working globally with all States and stakeholders to make genuine progress on the Business and Human Rights agenda. We are committed to continuing to engage at the UN level or in other formats to consider the best way to ensure that any further legal development addresses the real needs to prevent abuses and ensure access of victims to remedy when abuses occur. We are 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.

I thank you Mr. Chairperson-Rapporteur

**Interventie tijdens panel: “The voices of the victims"**

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.

**Interventie bij item 5 "Adoption of the report"**

Mr Chairperson Rapporteur,

We would like to thank you for the handling of this session and allowing for diverging views to be expressed. We would like to thank the Secretariat for the handling of this session and the elaboration of the draft report.

Four years have passed since the adoption of resolution 26/9 which triggered division in the Human Rights Council establishing this Intergovernmental Working Group. We would have liked to see genuine steps by the main sponsors to address the concerns expressed by us and others with a view to overcoming divisions. Otherwise, there is a risk that several States stick to their position not to participate and that others take a similar position. There is ultimately a risk that many States will not adopt the draft text if and when it is produced by this process. Equally, there is a risk of disillusionment among civil society, trade unions and even business who see the merit of further legal developments at the international level to level the playing field to better prevent abuses, and ensure access by victims to remedy when abuses occur.

We believe in effective multilateralism and we continue to expect that the flaws of this process be fixed or that a new process be initiated for progress on this important, yet complex, issue of our time. We owe it to victims and to the next generations.

The 4th session of the Intergovernmental Working Group is about to end. One year has passed since the end of the 3rd session when the Intergovernmental Working Group requested the Chairperson-Rapporteur to "undertake informal consultations with States and other relevant stakeholders on the way forward" [A/HRC/37/67], which entailed a need to find agreement on process. At the first and only consultation convened on 17 July 2018 to discuss the process, the European Union and States from different regions made concrete proposals, including to revert to the Human Rights Council, to find common ground and build a foundation for an inclusive, fruitful, substantive and constructive discussion – see Annex I for the full text of the EU intervention of 17 July 2018; Annex II contains the Joint Statement on Intergovernmental Working Groups delivered on 19 September 2018 during the 39th session of the Human Rights Council. These proposals and the proposals from others were unfortunately dismissed; instead, two days later, the Permanent Mission of Ecuador published the draft treaty and indicated it would proceed to the 4th session without a resolution. We reiterated our suggestions before the 39th session of the Human Rights Council, but to not avail.

Once it became clear that there would be no resolution before the 4th session, we conveyed the expectation that discussion on the future of the process be held before the start of the 4th session with all States and stakeholders to ensure predictability and minimize the risk of disagreement when Conclusions and recommendations are negotiated at the end of the session. There was no such space for discussion before the session, or indeed during the current session. The draft Conclusions and recommendations were made available only on the last day of this session, 19 October at around noon. Their content clearly confirmed that, in our view, there was no attempt by the Chairperson-Rapporteur to respond positively to the proposals to revert to the Human Rights Council with a view of rethinking the best way forward.

We decided therefore not to engage in the consultations on the Recommendations of the Chair-Rapporteur and Conclusions of the working group called on 19 October at a late hour in the session, and disassociate ourselves from their adoption. We therefore request that our position be accurately reflected in the report under the section "Adoption of the report": *"the European Union disassociates from the Recommendations of the Chair-Rapporteur and the Conclusions of the working group and considers that it is not bound by the directions set out".*

We see that the draft report presented to us does not always accurately reflect all views and positions and we welcome the fact that there will be a two-week period to make comments. We also welcome that an Annex will be developed with the attributions of positions expressed throughout the session, including in the opening and closing of this session.

We do not wish to block the adoption of the report, but we rather send yet another signal that it is about time to build common ground. We are committed to continue working within the EU on options for further legal development likely to effectively allow progress in the prevention of abuses by business-related activities, and ensure access to victims to remedy when abuses occur.

We invite all to reflect on the words of former Special Representative of the Secretary General Prof. John Ruggie in his [Open letter](https://www.business-humanrights.org/en/professor-john-ruggie-provides-guiding-principles-for-the-business-human-rights-treaty-negotiations-in-open-letter) to this Intergovernmental Working Group before the start of this session: *"Success—not on paper but on the ground—demands deep reflection, good will, and a constructive process that searches for consensus in the knowledge that real change requires it."*

I thank you Mr. Chairperson-Rapporteur.

1. Link to the latest contribution by the European Union, dated 20 June 2018: Consultations by the UN Working Group on Business and Human Rights on “Corporate human rights due diligence – identifying and leveraging emerging practice” <https://www.ohchr.org/Documents/Issues/Business/WGSubmissions/2018/EU.pdf> [↑](#footnote-ref-1)