



global witness



To: UN Working Group on the issue of human rights and transnational corporations and other business enterprises

Cc: Office of High Commissioner on Human Rights

Dear UN Working Group,

We write to you as a group of NGOs that have participated in past UN Forums on Business and Human Rights. We believe that the Forum continues to hold promise as a vehicle to drive forward respect for human rights by business, to have meaningful impact for rights-holders, and to improve remedies for victims of abuse. For this reason, we are encouraged by the focus of this year's Forum on access to remedy.

But we are also conscious that globally, far too few companies effectively manage the full range of their human rights responsibilities and avoid involvement in human rights abuses. For example, in the Corporate Human Rights Benchmark launched this week, 75% of the 98 major companies included in the benchmark reported *nothing* about ensuring remedy for workers whose rights have been violated. And far too few victims of abuse are able to obtain real remedies. As a result, there is a wide and growing gap between discourse in venues like the UN Forum on one hand, and realities, impacts, and an utter lack of effective remedies at the local level on the other. This gap, frankly, fundamentally threatens the entire project of bringing human rights to the core of business. Meaningful steps to close this gap at the Forum would signal the Working Group's recognition of the major work that remains.

We have three suggestions for the Forum, based on our experience and observations, and offered in the spirit of constructive engagement.

First, we urge you to ensure that rights-holders and victims of abuse seeking remedy are at the center of the Forum. This means, in practice, that:

- All sessions on access to remedy, and on specific grievance mechanisms, should begin with and be guided by the voice of affected communities, workers, and others with experience using these remedy mechanisms.
- We urge
 - the UN Working Group to call for Forum sessions that include direct participation by victims of abuse and other affected people themselves; and

- Forum organizers to make all efforts to fund, or to prioritize approval of sessions whose sponsors provide funding for, in-person participation of victims and their advocates, particularly those from the Global South.

Second, it is vital that the organizers, and specifically the UN Working Group, publicly recognize the root causes of continued lack of effective remedies: The inequality of power and resources between victims of abuse on one hand – workers, communities, human rights defenders, and other rights-holders – and the actors responsible for abuses on the other, specifically companies and governments. Framing the whole Forum and each session in this way will help keep the focus on the need for both fundamental reorientation and targeted reforms of remedy mechanisms, so that they actually move toward providing consistent, effective remedy to victims of human rights harms. Failing to do so would risk confining the sessions to identifying only technocratic, piecemeal solutions that would be wholly inadequate to the nature and scale of the current state of lack of remedy for victims of abuse.

Finally, we urge the UN Working Group to call for Forum sessions to be outcomes-oriented, namely by including identification of concrete commitments from actors in positions of power to advance change and overcome existing barriers to effective remedies. Each session should address how these concrete commitments could be achieved; the following is a non-exhaustive list of commitments that we see as vital:

For judicial remedies

- commitments by all jurisdictions to take steps to improve judicial remedies such as:
 - recognizing the importance of measures that address obstacles to remedy, e.g., group claims/class actions, and supporting and strengthening these measures
 - providing translation and interpretation to ensure courts and other mechanisms are accessible to all
 - pursuing criminal investigations and prosecutions with full resource support, where they are warranted
- commitments by states, including donor countries and agencies, to address resource constraints that hinder access to remedies, such as legal aid and adequate funding for courts
- commitments by home country states to empower courts to hear cases based on extrajudicial impacts

For non-judicial remedies

- commitments by all those who develop and operate non-judicial grievance mechanisms
 - to fully meet the UN Guiding Principles' Effectiveness Criteria for grievance mechanisms
 - to regularly, publicly evaluate and report on how these mechanisms are or are not meeting the Effectiveness Criteria with input from affected people and their advocates in civil society; and to what extent they are actually providing remedy as experienced by victims
- commitments by states to ensure that state-based non judicial grievance mechanisms, including OECD Guidelines National Contact Points, and those associated with inter-governmental institutions
 - are given the necessary powers and resources to provide effective remedy for victims of abuse, and are shielded from political interference to protect their impartiality
 - formally include an active role for affected people in crafting, improving, and governance of these remedies
- commitments by states to include in all regulation of projects in high-risk sectors, such as infrastructure, agribusiness and extractive industries, provisions for the establishment of on-site third-party monitoring committees led by affected people.

- commitments by companies
 - to ensure rights-holders play a central role in the design of operational-level grievance mechanisms and remediation measures, so that they effectively protect their rights and respect their culture
 - to integrate access to remedy, in line with the UN Guiding Principles' Effectiveness Criteria for grievance mechanisms, into companies' due diligence and other processes to manage human rights risks
 - that use of operational-level grievance mechanisms will not preclude other avenues for remedy

Sessions should work towards formulating action points and commitments by each of the stakeholder groups in order to address the realities identified, that can be tracked over time and reviewed annually. The status of progress these commitments should be included in the Working Group's report on the outcomes of each year's Forum.

Although some of these recommendations may be a departure from the orientation of past Forums, we believe they are essential for this year's Forum – and the Guiding Principles themselves – to meet the as yet unfulfilled promise of real improvements in the Remedy pillar.

We thank you for your attention to these vital issues and your leadership in working for respect of human rights by business. We would be very pleased to discuss these issues with you further, at your convenience.

Sincerely,

Business & Human Rights Resource Centre (headquartered in UK)

Centre for Research on Multinational Corporations – SOMO (headquartered in Netherlands)

Advocates for International Development (headquartered in UK)

Conectas Direitos Humanos (headquartered in Brazil)

Global Witness (headquartered in UK)

International Federation for Human Rights – FIDH (headquartered in France)

International Service for Human Rights (headquartered in Switzerland)

Lumière Synergie pour le Développement (headquartered in Senegal)