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Background note by the Secretariat

Summary

This document aims to provide relevant information to help participants prepare for the second annual Forum on Business and Human Rights. It presents background information and frequently asked questions on the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (Human Rights Council resolution 17/4) and on their dissemination and implementation. The annex to the note contains a non-exhaustive list of standards, tools and guidance on business and human rights to assist participants in preparing for the Forum.

I. The Forum on Business and Human Rights: a platform for outreach and capacity-building

1. The Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31, annex) are a set of 31 principles that were unanimously endorsed on 16 June 2011 by the Human Rights Council in resolution 17/4 and that form a comprehensive, global reference point for understanding the respective duties and responsibilities of States and business for addressing business impacts on human rights. In the same resolution, the Council created the annual Forum on Business and Human Rights, which aims to bring various stakeholders together for an open dialogue to discuss trends and challenges in the implementation of the Guiding Principles. The first Forum was held from 3 to 5 December 2012.¹

2. While the primary objectives for the annual Forum remain global dialogue and the exchange of ideas on challenges and lessons learned on the implementation of the Guiding Principles,² calls were made during the first annual Forum for increased efforts to build the capacity of various actors to better understand the operational and practical implications of the Guiding Principles in different contexts. Forum participants noted that enhanced capacity in understanding and using the Guiding Principles was necessary across stakeholder groups and regions in order to facilitate the effective dissemination and implementation of the Guiding Principles. While numerous relevant actors around the world have already incorporated elements of the Guiding Principles into their work, many continue to express the need for further learning opportunities, explanations and information.

3. The United Nations has a central role in this regard, as highlighted in the report by the Secretary-General to the twenty-first session of the Human Rights Council on how the United Nations system as a whole can contribute to advancing the business and human rights agenda (A/HRC/21/21). The Office of the United Nations High Commissioner for Human Rights (OHCHR) supports the Working Group on the issue of human rights and transnational corporations and other business enterprises and serves as the secretariat for the annual Forum. OHCHR is also engaged in various training initiatives and technical support in cooperation with United Nations field presences to enhance the capacity of Governments, business, civil society, indigenous and minority communities, labour unions and national human rights institutions to implement and use the Guiding Principles.

4. Various learning opportunities for participants on the Guiding Principles will be offered to participants of the 2013 Forum. In order to help participants prepare for the Forum, the present document explains some of the key concepts contained in the Guiding Principles and answers some of the most frequently answered questions relating to the Guiding Principles. The annex to the present note contains a non-exhaustive list of different tools and guidance documents that may be relevant to Forum participants, in particular those who wish to learn more about initiatives in different regions and sectors.

¹ See the webpage of the 2012 Forum for documentation and links to the webcasts: www.ohchr.org/EN/Issues/Business/Forum/Pages/2012ForumonBusinessandHumanRights.aspx.

² See the mandate for annual Forum as set out in A/HRC/17/4, paragraph 12.

II. Frequently asked questions on the Guiding Principles

Why are human rights relevant to business?

5. States have the legal obligation to respect, protect and fulfil the human rights set out in the international human rights conventions that they ratify (similar responsibilities result from the human rights declarations and other such political commitments that States make, although those responsibilities are not usually legally binding). Thus, States are often referred to as the primary “duty bearers” under the human rights framework.

6. International human rights treaties generally do not impose direct legal obligations on private actors, such as business enterprises. Instead, States are responsible for enacting and enforcing domestic legislation that has the effect of requiring business enterprises to respect human rights — such as laws fixing a minimum age for work. It is important to note that domestic law provisions and some human rights requirements in contracts may result from, or be heavily influenced by, international human rights treaties.

7. It has long been recognized that business can have a profound impact on human rights. That impact can be positive: for example, by delivering innovation and services that can improve living standards for people across the globe. It can also be negative, for example where business activities destroy people’s livelihoods, exploit workers or displace communities. Business enterprises can also be complicit in human rights violations committed by other actors, including States — for example, if they collude with security forces in violently suppressing protests or provide information to States on customers that the State then uses to track down and punish dissidents. The Universal Declaration of Human Rights calls upon “every organ” of society to contribute to realizing human rights for all; however, until the “Protect, Respect and Remedy” framework was endorsed by the Human Rights Council in 2008, there was little agreement about what responsibility for human rights should be attributed to business. The Guiding Principles, endorsed in 2011, provide principles for operationalizing this framework, explaining what is expected of States and business enterprises specifically.

Where did the Guiding Principles originate?

8. The development of the Guiding Principles was led by John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises from 2005 to 2011, and supported by OHCHR. The mandate of the Special Representative was established by the former Commission on Human Rights in 2005 in response to the growing concern about the impact of business activities on human rights and the lack of clarity on the human rights responsibilities of business.

9. The Special Representative initiated an ambitious research and consultation programme, putting particular emphasis on conducting multi-stakeholder consultations in all regions of the world, in order to ensure that his views and recommendations were informed by a broad range of perspectives and experiences. A total of 47 consultations and expert meetings were convened with the participation of all stakeholder groups, including representatives of Governments, business, civil society, and communities whose human rights have been impacted by business activities.

10. In 2008, on completion of his first three-year mandate, the Special Representative presented the “Protect, Respect and Remedy” framework to the Council (A/HRC/8/5). The Framework affirms that States have a duty to protect individuals from business-related human rights abuse, that businesses have an independent responsibility to respect human

rights, and that victims must have access to effective remedy. The Council unanimously welcomed the framework. The Council also extended the Special Representative's mandate by a further three years, with the request that he "operationalize" the framework.

11. The Special Representative presented the Guiding Principles on Business and Human Rights to the Council and they were unanimously endorsed on 16 June 2011. In the resolution in which it endorsed the Guiding Principles, the Council also decided to establish a working group to focus on the global dissemination and implementation of the Guiding Principles. Following the endorsement by the Council, the Guiding Principles have also been endorsed by a large number of international organizations, businesses, industry organizations, trade union networks and civil society organizations.

What do the Guiding Principles say?

12. The Guiding Principles on Business and Human Rights mirror the structure of the 2008 "Protect, Respect and Remedy" framework and provide 31 principles for operationalizing this framework.

13. **The State duty to protect (principles 1–10).** The Guiding Principles affirm that the State duty to protect individuals from human rights abuses committed by business enterprises requires the State to take legislative and policy steps. This duty derives from existing human rights duties that States have undertaken by ratifying one or more international human rights treaties. States must not only ensure that adequate laws and policies are in place to require businesses operating in their territory or jurisdiction to respect human rights, but must also issue preventative guidance and provide redress via judicial or non-judicial mechanisms. The duty to protect applies also where States contract with business enterprises to deliver public services, such as health care or water. It also applies to States when they act as part of multilateral organizations.

14. **The corporate responsibility to respect (principles 11–24).** The Guiding Principles clarify that all business enterprises have the responsibility to respect all internationally recognized human rights, wherever they operate. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. The Guiding Principles elaborate on the steps that businesses must take to be able to "know and show" that they meet this responsibility to respect human rights. Where businesses find that they have caused or contributed to harm, they must provide for or participate in effective remedy processes. Importantly, the Guiding Principles clarify that the corporate responsibility to respect human rights is independent of States' ability or willingness to fulfil the duty to protect human rights.

15. **Access to remedy for victims (principles 25–31).** States must ensure that persons whose human rights have been affected by business activities can access an effective remedy through the court system or through a legitimate non-judicial process. Companies, for their part, are expected to establish or participate in effective grievance mechanisms to provide redress to individuals or communities for any negative impact that they have caused.

How do the Guiding Principles relate to the international human rights system?

16. The Guiding Principles are based on, align with and contribute to the international human rights system by identifying, elaborating and clarifying existing standards and practices for States and business. For example, the Guiding Principles clarify that the State duty to respect, protect and fulfil human rights entails the duty to protect against abuse

committed by private actors (principle 1), including business enterprises, and explain what this means in practice: enacting and enforcing laws and policies that have the effect of requiring business enterprises to respect human rights (principle 3), providing adjudication and ensuring redress when abuses occur. As such, they combine existing standards and practices into a single coherent template and identify areas where the current human rights regime falls short and point to how it should be improved.

What is the legal status of the Guiding Principles?

17. The Guiding Principles are not an international treaty that can be ratified by States and they do not create new legal obligations. Instead, the Guiding Principles clarify and elaborate on the implications of the existing international human rights treaty framework for States, and provide guidance on how to operationalize it. This does not mean, however, that business and human rights is a “law-free” zone — the Guiding Principles refer to States’ existing obligations under international law (principle 1) and new domestic or international legislation may be introduced to ensure effective implementation of the Guiding Principles in practice.

18. Because they do not create new legal obligations, but instead elaborate on the existing obligations and responsibilities, the Guiding Principles apply to all States without States having to “sign up” to a legal instrument.

If the Guiding Principles are not a binding treaty, isn’t it all just voluntary?

19. No. The Guiding Principles clarify that the State duty to protect human rights under the international human rights framework includes the duty to protect everyone in their jurisdiction from abuses committed by private actors, including business enterprises (principle 1). This is an obligation for all States and, in most cases, a legal obligation owing to a State’s ratification of legally binding international human rights treaties.

20. Furthermore, respecting all internationally recognized human rights is the minimum expected of all businesses in all situations (principles 11, 12 and 14). In many States, that responsibility is reflected — fully or partly — in domestic law or regulations corresponding to international human rights standards. Businesses are bound by such domestic law. Contractual obligations between business partners can also bind companies to human rights processes and outcomes, with material and serious consequences when obligations are not fulfilled, such as losing the chance to operate or provide services in a given area.

21. Additionally, the responsibility to respect human rights constitutes a global standard of expected conduct applicable to all businesses in all situations, affirmed and reflected in numerous international soft-law standards and initiatives, as well as policies and statements by a range of actors. In practical terms, human rights due diligence (principle 17) and the remediation of harms (principle 22) are required if a business is to know and show that it is meeting its responsibility to respect human rights. Failure to meet that responsibility can subject businesses to the courts of public opinion — comprising employees, communities, consumers, civil society and investors — and sometimes lead to charges in actual courts. There can be legal, financial and reputational consequences if enterprises fail to meet the responsibility to respect human rights. The Guiding Principles state that business enterprises should always treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue (principle 23).

What do the Guiding Principles mean for victims of corporate human rights abuse?

22. The Guiding Principles give victims of human rights abuses by business enterprises an important tool for seeking remedy and holding businesses accountable. They provide an authoritative global benchmark against which to measure and demonstrate whether businesses have taken the steps necessary to respect human rights and/or remediate any harm they have caused. They also contain important criteria against which to assess non-judicial grievance mechanisms (principle 31).

23. They furthermore affirm the duty of States to ensure access to effective remedy for victims (principle 25), set out what constitute effective grievance mechanisms, identify obstacles in access to remedy and provide guidance on how to overcome such obstacles (principles 26 and 28).

24. The Guiding Principles do not themselves provide a grievance mechanism or remedy — the “access to remedy” pillar of the Guiding Principles must be implemented by States and business in order for victims to be assured of access to effective remedy.

How do the Guiding Principles address the relationship between the responsibilities of States and businesses?

25. The Guiding Principles reflect the differentiated, but complementary roles of States and businesses with regard to human rights. By outlining more clearly the role of each, the Guiding Principles provide a framework which attributes the respective duties or responsibilities to States and businesses to help them address their adverse human rights impacts in specific instances.

26. The Guiding Principles clarify that corporate responsibility for human rights is not purely a concern for business and States also have positive obligations in this regard (principles 1–10). Simultaneously, they clarify that the responsibility of businesses to respect human rights, while different from the obligations of the State, applies regardless of whether the State meets its own human rights obligations.

27. The Guiding Principles also enable better management of the imbalances between businesses and persons whose human rights have been negatively impacted by business activities by providing a framework for what business enterprises have to do regarding human rights, against which business conduct can be evaluated and businesses can be held to account.

The Guiding Principles focus on business and States – what is the role of international organizations and civil society?

28. A range of organizations and groups, including investors, insurers, industry associations, multi-stakeholder organizations, trades unions and civil society organizations can — and many already do — use the Framework and the Guiding Principles to develop their own business and human rights policies and processes, including lobbying and advocacy work. The annex to the present document contains a non-exhaustive list of such initiatives and relevant guidance.

29. The Guiding Principles also clarify that States retain their human rights obligations when they act as part of multilateral organizations that deal with business-related issues, such as international financing institutions, trade organizations and development initiatives (principle 10). When States participate in such organizations, their actions should be guided

towards enabling or requiring — and not undermining or constraining — business respect for human rights. Collective action through multilateral institutions can help States level the playing field with regard to business respect for human rights by raising the performance of those who have fallen behind through capacity-building and incentives, as well as standard-setting.

Annex

Sources of further information to prepare for the Forum

1. Business and human rights is an evolving field, with an ever-increasing number of international standards, mechanisms, tools and guidance. To assist participants with their preparation for the 2013 Forum, and to enhance their engagement on business and human rights in the future, there are various initiatives related to the Guiding Principles and other complementary initiatives supporting the business and human rights agenda, which participants may wish to consult. It should be noted that this is a non-exhaustive list of tools and guidance documents and there are myriad other initiatives, projects and activities, as well as innovative research that may surface in the discussions during the Forum.
2. The inclusion of any tool or guidance in the present annex does not constitute an endorsement by the United Nations or the Working Group. It is provided purely to support participants in their preparations for the annual Forum and to contribute to enhancing the capacity of Forum participants on business and human rights.
3. Participants may wish to:

Human Rights Council and related mechanisms

(a) Read Human Rights Council resolution 17/4 endorsing the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, and creating the Working Group on the issue of human rights and transnational corporations and other business enterprises and the annual Forum on Business and Human Rights. Available from:

www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session17/Pages/ResDecStat.aspx

(b) Examine the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, available in the six official languages of the United Nations. Available from:

www.ohchr.org/EN/PublicationsResources/Pages/ReferenceMaterial.aspx

(c) See additional reports providing background to the development of the Guiding Principles by the Special Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations and other business enterprises, and Working Group reports on the uptake of the Principles. Available from:

www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx

(d) Read about the mandate, activities and work of the Working Group on the issue of human rights and transnational corporations and other business enterprises, consisting of five independent experts. Available from:

www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx

(e) Watch the webcasts of sessions and read the official documents from the 2012 Forum. Available from:

www.ohchr.org/EN/Issues/Business/Forum/Pages/2012ForumonBusinessandHumanRights.aspx

Office of the United Nations High Commissioner for Human Rights

(f) See the link of the Office of the High Commissioner (OHCHR) to tools on business and human rights, including the publication containing the text of the Guiding Principles on Business and Human Rights and *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, available in the six official languages of the United Nations. Available from:

www.ohchr.org/EN/Issues/Business/Pages/Tools.aspx

(g) Explore the OHCHR *Handbook for Civil Society* and read how to engage with the Office and the United Nations human rights bodies, including the mechanisms of the Human Rights Council. Available from:

www.ohchr.org/EN/AboutUs/CivilSociety/Pages/Handbook.aspx

(h) Familiarize themselves with the core international human rights treaties. Available from:

www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx

Other United Nations mechanisms and initiatives relevant to business and human rights

(i) Explore the normative and legal international labour standards of the International Labour Organization and view the agenda of the International Labour Conference and opportunities for engagement. Available from:

www.ilo.org/global/standards/lang--en/index.htm

www.ilo.org/ilc/ILCSessions/102/lang--en/index.htm

(j) Familiarize themselves with the United Nations Global Compact, the platform of the United Nations for engaging the business sector, and how to participate. Available from:

www.unglobalcompact.org

www.unglobalcompact.org/HowToParticipate/index.html

(k) Consult the Global Compact tools and resources page for information on the areas covered in the 10 principles (human rights, labour, environment and anti-corruption) and on: business and peace; business for development; financial markets; United Nations-business partnerships; supply chain sustainability; corporate governance; higher education institutions and principles for responsible management; education; agriculture and food; and resources released at the Rio+20 Corporate Sustainability Forum. Available from:

www.unglobalcompact.org/AboutTheGC/tools_resources/index.html

(l) Read and contribute to the Global Compact's draft business reference guide on indigenous peoples' rights and call for case studies. Available from:

www.unglobalcompact.org/Issues/human_rights/indigenous_peoples_rights.html

(m) Consult the Children's Rights and Business Principles produced by the Global Compact, together with the United Nations Children's Fund (UNICEF) and Save the Children. Available from:

www.unglobalcompact.org/Issues/human_rights/childrens_principles.html

(n) Review the work on human rights of the United Nations Environment Programme's Finance Initiative. Available from:

www.unepfi.org/work_streams/human_rights/index.html

(o) Consult the Food and Agriculture Organization's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, as endorsed by the Committee on World Food Security. Available from:

www.fao.org/nr/tenure/voluntary-guidelines/en/

(p) Review the revised Sustainability Framework (2012) of the International Finance Corporation. Available from:

www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_site/IFC+Sustainability/Sustainability+Framework

National human rights institutions

(q) Review the complete list of accredited national human rights institutions (NHRIs) around the world for those existing in countries where they work, or where a business enterprise is domiciled, and review their jurisdiction and cases examined. Available from:

www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf

(r) View the webpage of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights for activities related to the promotion of business and rights of its Working Group on Business and Human Rights (ICCWG). Available from:

<http://nhri.ohchr.org>

(s) See the 2010 Edinburgh Declaration devoted to the role of NHRIs in addressing business and human rights. Available from:

www.ohchr.org/Documents/AboutUs/NHRI/Edinburgh_Declaration_en.pdf

Other inter-governmental mechanisms, tools and guidance

(t) Familiarize themselves with the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises (revised 2011). Available from:

<http://mneguidelines.oecd.org/>

(u) Review the modalities of the OECD mechanism of national contact points, which are national agencies established to promote and implement the Guidelines. See the list of national contact points for those existing in countries where participants work, or where a business enterprise is domiciled. Browse the list of statements regarding specific instances taken up by the OECD national contact points. Available from:

www.oecd.org/daf/inv/mne/ncps.htm

www.oecd.org/daf/inv/mne/2013NCPCContactDetails.pdf

www.oecd.org/daf/inv/mne/ncpstatements.htm

(v) Examine the European Commission's "My Business and Human Rights: A Guide to Human Rights for Small and Medium-sized Enterprises". Available from:

http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final_en.pdf

(w) See the European Policy on Corporate Social Responsibility (2011). Available from:

http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm

(x) Consult the European Commission sector guides on business and human rights on: employment and recruitment agencies; information and communication technology; and oil and gas. Available from:

http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index_en.htm EU Sector guides
