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**Human Rights Council**  
**Forum on Business and Human Rights**  
**First session**  
4 and 5 December 2012

## **Summary of discussions of the Forum on Business and Human Rights, prepared by the Chairperson, John Ruggie**

### *Summary*

The present document provides a summary of the discussions of the first annual Forum on Business and Human Rights, held on 4 and 5 December 2012. Due to the word limit of the document and the scale of the event (21 substantive sessions), this summary does not purport to cover the depth and breadth of the discussions at the Forum. It provides a brief overview of the proceedings and should be read as an executive summary together with the session concept notes, statements received, written submissions and session web recordings that are available on the Forum website.

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## I. Introduction

1. In its resolution 17/4, the Human Rights Council decided to establish an annual Forum on Business and Human Rights under the guidance of the Working Group on the issue of human rights and transnational corporations and other business enterprises. The Forum was established to discuss trends and challenges in the implementation of the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex); promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups; and identify good practices. The first annual Forum was held in Geneva on 4 and 5 December 2012. Side events and preparatory sessions were held on 3 December.

2. As per resolution 17/4, the chairperson of the Forum was appointed by the President of the Human Rights Council, serving in his personal capacity, and is responsible for the preparation of the summary of the discussions of the Forum, to be made available to the Working Group and participants of the Forum. The present report is submitted pursuant to this request.

3. The Forum was prepared under the leadership of the Working Group, which set out a strategy to maximize the potential of the Forum to serve as a key annual platform for relevant stakeholders from all regions to engage in dialogue on business and human rights, and to strengthen engagement towards the effective and comprehensive implementation of the Guiding Principles. In preparation for the Forum, the Working Group received inputs from stakeholders, including through a consultation held on 10 May 2012, on ideas for the themes and modalities of the Forum (A/HRC/WG.12/2/1, para. 5). In order to ensure the Forum's relevance and direct engagement of stakeholders, the Working Group decided to involve external experts and partners to facilitate and co-organize the different substantive sessions, while providing the terms of reference for the sessions and overall guidance.

4. The Forum's unique multi-stakeholder nature is derived from resolution 17/4, in which the Human Rights Council stipulates that the Forum shall be open to relevant stakeholders, including States, business enterprises and associations, and civil society. About 1,000 participants from over 80 different countries registered for the Forum, far exceeding expectations.<sup>1</sup> Approximately 50 Governments registered, along with about 150 business enterprises, 170 civil society organizations, 5 international trade union networks and about 20 national human rights institutions, as well as at least 15 specialized agencies from the United Nations system and 17 international and regional institutions. Participants included stakeholders directly affected by business operations. Men and women participated in equal numbers.

5. The two formal days of the Forum included 21 substantive sessions, which focused on trends and challenges in the implementation of the Guiding Principles on Business and Human Rights by taking stock of initial efforts by relevant stakeholders; discussing current and emerging challenges to implementation; and identifying opportunities and priorities for action by States, business enterprises and others. In addition, a number of sessions during the Forum addressed the role of specific actors or issue areas. The Working Group also led two sessions to present aspects of its work.<sup>2</sup>

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<sup>1</sup> For the list of registered organizations, see [www.ohchr.org/EN/Issues/Business/Pages/ForumonBusinessandHR2012.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/ForumonBusinessandHR2012.aspx).

<sup>2</sup> For the programme of work and session concept descriptions, see A/HRC/FBHR/2012/INF.1. For video recordings of the sessions, stakeholder submissions, written statements and presentations by panelists, see [www.ohchr.org/EN/Issues/Business/Pages/ForumonBusinessandHR2012.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/ForumonBusinessandHR2012.aspx).

6. Finally, participants organized 12 side events during the Forum, and a number of organizations signed up for a stand in a “marketplace”, designed to stimulate an informal exchange of information and tools relating to implementation of the Guiding Principles.

## **II. Opening high-level session**

7. The Forum was opened on 4 December 2012 by a panel of high-level participants who addressed how the global community should move from business and human rights principles to implementation in practice.

8. In her welcoming remarks, the President of the Human Rights Council, Laura Dupuy Lasserre, highlighted the role of the Human Rights Council in leading the international community’s promotion of the business and human rights agenda for the past 10 years, and emphasized that the overwhelming interest in the Forum was testament to the importance of the issue.

9. The Chairperson of the Forum, John Ruggie, delivered an opening address that provided the overall context for the discussions. He outlined how governance gaps between market forces and the capacity of societies to manage their adverse consequences had been widened as a result of globalization. The Chairperson explained that the Guiding Principles prescribed paths for strengthening and better aligning public, civil and corporate governance systems in relation to business and human rights with the aim of generating mutually reinforcing dynamics and cumulative change. Since June 2011, core elements of the Guiding Principles had been incorporated by numerous international and national standard-setting bodies, as well as by businesses and other stakeholder groups. Finally, the Chairperson noted three broad issues that merited attention going forward: the need to scale up capacity-building efforts; the risk that some of the coherence and cumulative momentum provided by the Guiding Principles may diminish unless they are reinforced through information sharing and authoritative commentaries; and the need to address the current lack of legal clarity regarding corporate liability for gross human rights abuses.

10. The Chairperson-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Puvan Selvanathan, delivered opening remarks on behalf of the Working Group. He stressed the Working Group’s vision of the Forum to serve as a venue to foster genuine exchange among stakeholders and collective learning, including for the Working Group, with a focus on identifying opportunities for dissemination and implementation of the Guiding Principles in all regions, as well as on the experience of different actors in implementing and applying the three pillars of the Guiding Principles.

11. The United Nations High Commissioner for Human Rights, Navanethem Pillay, called on Governments to step up to close the governance gaps that had played a large part in both facilitating and sustaining the current economic crisis, and on business to cooperate with Government efforts in that regard. She recalled that the Guiding Principles recognized that responsible governance requires adequate regulatory and policy frameworks to prevent and remedy business-related human rights abuses; that responsible business means acting with respect for human rights; that accountability and right to a remedy are at the core of the international human rights regime and also need to be at the core of deliberations about the Guiding Principles; and that the United Nations system and the Office of the United Nations High Commissioner for Human Rights (OHCHR) have a role to play in advancing the implementation of the Guiding Principles, as recommended in the report of the Secretary-General to the Human Rights Council (A/HRC/21/21 and Corr.1) and echoed in Human Rights Council resolution 21/5.

12. Michael H. Posner, Assistant Secretary of State for Democracy, Human Rights, and Labor, United States of America, stressed that the Guiding Principles went beyond traditional notions of corporate social responsibility. He emphasized the primary role of States and the duty to protect human rights, and proposed States should pursue that duty, both individually and collectively. He suggested that in some situations Governments should consider imposing requirements on companies, citing the United States reporting guidelines for companies operating in the Democratic Republic of the Congo and in Myanmar, and should know when it is prudent not to act, giving the example of the right to free speech and Internet governance. With regard to business responsibility, Mr. Posner underscored the need for senior-level commitment to human rights; adequate internal implementation systems; development of benchmarks for measuring progress; engagement of external stakeholders, including civil society; and collective industry action.

13. The European Union Special Representative for Human Rights, Stavros Lambrinidis, noted that the Guiding Principles were a key point of reference for European Union policy and the process underway among its member States to develop national plans of action on business and human rights. He highlighted the European Commission's initiative for legislation on disclosure requirements for large companies, as well as guidance development supported by the European Union: the recently published introductory guide to human rights for small and medium-sized enterprises, based on the Guiding Principles, as well as forthcoming guidance for companies in three sectors: oil and gas; information and communications technology; and employment and recruitment agencies.

14. The Deputy Director-General for Policy, International Labour Organization (ILO), Sandra Polaski, focused on how the ILO – together with its tripartite constituents in Governments, employers' organizations and trade unions – could contribute to advancing implementation of the business responsibility to respect human rights. She cited recommendations by the Secretary-General (A/HRC/21/21 and Corr.1) to enhance coordination and collaboration between the ILO, United Nations human rights bodies and OHCHR to promote implementation of the Guiding Principles, with emphasis on the role of the ILO as the guardian of international labour standards, which form part of the Guiding Principles' foundation.

15. Debbie Stothard, Deputy Secretary-General, International Federation for Human Rights (FIDH) and Coordinator of the Alternative ASEAN Network on Burma, referred to specific individuals who had been killed or jailed in efforts to try to stop human rights abuses linked to business activities. She flagged the impunity of those responsible, the criminalization of human rights defenders, and the lack of access to justice as continuing challenges. She noted that the development of the Guiding Principles as an issue for discussion at the national, regional and international levels was to be welcomed, but underscored the imperative that talk translate into reforms and effective corporate accountability.

16. Andrei Galaev, Chief Executive Officer, Sakhalin Energy Investment Company Ltd., shared the approaches adopted by Sakhalin to put the Guiding Principles into practice: (a) respect for human rights should be an integral part of any business activities; (b) policies must be supported by full due diligence processes; (c) the company should be ready to address complaints from stakeholders even if it already has mitigation measures in place; (d) business responsibility for human rights also applies to business relationships; and (e) top management should control the process. With respect to practical implementation of the approaches, Mr. Galaev noted, inter alia, the experiences of Sakhalin's own non-judicial grievance mechanisms, and cited the example of special clauses in contracts with external contractors.

### **III. Taking stock one and a half years after the endorsement of the Guiding Principles: parallel sessions**

#### **A. The State duty to protect**

17. The session facilitator was Alan Miller (Chair, Scottish Human Rights Commission).

18. Thomas Kennedy (Deputy Head, Human Rights and Democracy Department, Foreign & Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland) reported that his Government would launch its business and human rights strategy in early 2013. A cross-government steering committee had been created and stakeholder outreach meetings with multinational enterprises, medium-sized enterprises and civil society organizations had been organized in 2012.

19. Daniel Schydlofsky Rosenberg (Superintendent, Superintendency of Banks, Insurers and Pension Funds of Peru) gave an overview of how the financial regulatory authority in Peru was taking steps to prevent social conflict arising from business activities and using financial regulation to approach business and human rights issues in the country's mining sector. This involved collaboration between the regulator and the financial sector and banks, requiring clients to assess risks and consider mechanisms for conflict resolution.

20. Bente Angell-Hansen (Secretary-General, Ministry of Foreign Affairs, Norway) gave an overview of national efforts to implement the Guiding Principles. The key challenge for the Government was to ensure that businesses were facing a comprehensive and coherent incentive structure when investing and operating, both at home and abroad. In response, Norway had established an interdepartmental group to promote the implementation of the Guiding Principles. Ms. Angell-Hansen highlighted the Government's use of its policy towards State-owned companies and its ethical criteria to safeguard human rights in the Government's Pension Fund investments as two effective tools. In order to engage with companies and civil society and to learn from their experiences, the Government had also established a multi-stakeholder network.

21. Claire Methven O'Brien (International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) and Danish Institute for Human Rights) shared the experiences of national human rights institutions in promoting implementation of the Guiding Principles, including an initiative of the European Group of National Human Rights Institutions to promote national plans of action on implementation of the Guiding Principles. She highlighted a pilot project by the Danish Institute for Human Rights to create a methodology for identifying how the Guiding Principles had been implemented in national law and policy.

22. Interventions from the floor addressed the efforts by the Government of Australia to develop a national policy on business and human rights; the value of the Guiding Principles in the implementation of best practices in the country context; lessons from community grievance mechanisms; questions as to whether Governments would consider legislation as a tool to promote implementation of the Guiding Principles and recommendations for setting up dialogue processes; references to indigenous territory; extraterritoriality; and the need for States to implement ILO standards on the ground.

23. Michael Addo, member of the Working Group, called on States to show leadership, vision and direction in the implementation of the Guiding Principles. He also called on all stakeholders to act as catalysts and multipliers for reaching new audiences.

## **B. The business responsibility to respect**

24. This session was facilitated by Christine Kaufmann (University of Zurich).
25. Dan Bross (Senior Director, Corporate Citizenship, Microsoft) underlined the usefulness of cross-industry efforts and the need for a “champion” to take the first initiative in a company for advancing implementation of the business responsibility to respect.
26. Christian Leitz (Head, Corporate Responsibility Management, UBS) provided an overview of the adoption of the corporation’s human rights statement and the launch of the new “Thun Group” initiative. The key for the Group was to act collectively, and to share views and experiences. He highlighted the need to “translate” the Guiding Principles to make them immediately applicable for banks.
27. Alan Fine (Public Affairs Manager, AngloGold Ashanti) highlighted human rights-related challenges faced by the industry and how AngloGold had been “socializing” human rights within the company. Part of the process was to bring in a new human rights expert and try to incorporate human rights in already existing structures.
28. Min Zar Ni Lin (Myanmar Development Resources Institute) highlighted both the general human rights situation in Myanmar and the need to improve corporate performance with regards to human rights.
29. Austin Onuoha (Executive Director, Africa Center for Corporate Responsibility) stressed that transparency initiatives did not help if there was no action. Companies’ reluctance to talk about their human rights situation was also a problem of capacity; senior management needed to be convinced of the Guiding Principles to spread them within the rest of the company.
30. Auret van Heerden (Head, Fair Labor Association) highlighted the need for a system to address human rights in the global supply chain and the general problem of implementation. Most companies did not have full control over their supply chain and therefore struggled with monitoring. He shared the experience of the Association, which, by creating a safe space for different stakeholders without “naming and shaming”, found opportunities to discuss challenges in an open manner and to come up with practical solutions.
31. Issues raised from the floor included risk assessments; human rights implementation being outside the comfort zone of some companies; indirect links to suppliers and their stance on human rights; the need for training within companies; and the challenge of “translation” of human rights to various cultural contexts.
32. Margaret Jungk, member of the Working Group, noted that there was an ongoing collective learning process on human rights and business, but at the same time that there were opportunities to build on already existing policies within companies.

## **C. The role of global governance frameworks**

33. The session facilitator was Chris Jochnick (Director, Private Sector, Oxfam America).
34. Roel Nieuwenkamp (Chair, Working Party of the Investment Committee of the Organization for Economic Cooperation and Development (OECD); and Managing Director, Trade Policy and Globalization, Ministry of Economic Affairs, Agriculture and Innovation, the Netherlands) described the OECD Guidelines for Multinational Enterprises, their legally binding nature on 44 States, and the grievance mechanism in place with national contact points.

35. Tom Dodd (Policy Adviser on Corporate Social Responsibility, Directorate-General for Enterprise and Industry, European Commission) discussed the role of the European Union in promoting corporate social responsibility, providing guidance and influencing the policy agenda. He noted that, with the exception of some issues, such as human rights considerations in European Union external trade and investment policy, the impetus for developing business and human rights policies remained with States.

36. Rafendi Djamin (Indonesian Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR)) described the groundwork laid by the Association of Southeast Asian Nations (ASEAN) for implementation of a corporate social responsibility policy and its alignment with the Guiding Principles, noting that there was a very low level of awareness of the Guiding Principles in the region.

37. Henrik Linders (Office of the Compliance Advisor/Ombudsman (CAO) of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency) described how CAO acted as a grievance mechanism for IFC, and noted that it also offered advice to businesses and dispute resolution. He highlighted that important aspects of the 2012 revision of the IFC Sustainability Framework were aligned with the Guiding Principles.

38. Margaret Wachenfeld (Director of Legal Affairs, Institute for Human Rights and Business) responded to several of the challenges raised: the OECD should move the Guiding Principles “upstream” into the architecture of financial institutions; the European Commission should strengthen alignment of investment treaties and arbitration with the Guiding Principles; CAO should raise awareness of the financial value of sustainability; and AICHR should move the human rights agenda into business-related discussions within ASEAN.

39. Victor Ricco (Human Rights, Business and Sustainable Development Program Coordinator, Center for Human Rights and Environment) responded by welcoming the alignment of the OECD Guidelines with the Guiding Principles. He stressed the importance of coherence, autonomy and transparency of national contact points, and that they needed tools to ensure government implementation of the principles and respond to concerns raised by stakeholders.

40. Additional issues that were discussed included integrating the Guiding Principles into the development agenda beyond 2015; the need to strengthen existing, and create new, accountability mechanisms and increase awareness of and access to such mechanisms; and the need to promote greater convergence and coherence of standards between and among States, international organizations and businesses.

41. Alexandra Guáqueta, member of the Working Group, highlighted the need to strengthen convergence around the Guiding Principles; to measure the performance and effectiveness of national contact points; and to strengthen the uptake of the Guiding Principles in the financial sector.

#### **D. Access to judicial remedy**

42. The session facilitators were FIDH and Conectas Direitos Humanos. The session moderator was Elin Wrzoncki (Head, Globalization and Human Rights Desk, FIDH).

43. Juana Kweitel (Programme Director, Human Rights, Conectas Direitos Humanos) stressed that access to judicial remedy was a human right in itself at the core of international human rights law. She noted that although the right to an effective remedy was included in the Guiding Principles, judicial remedy had received little attention. She argued

that the Working Group should look into ways to remove obstacles and fulfil the rights of victims of business-related abuse.

44. Rosa Amaro, an affected stakeholder from Peru, presented the case of La Oroya, emphasizing that victims affected by very high pollution levels around the nearby mine had repeatedly been denied access to remedy, and that victims and human rights defenders had experienced reprisals and harassment. She called on the Government to protect the human rights of affected victims and on business enterprises to incorporate respect for human rights into their operations.

45. Dickay Kunda, an affected stakeholder from the Democratic Republic of the Congo, presented the Kilwa mining case. He recalled how his family had been affected by the case, and described the struggle to seek justice through attempts to hold the company to account in courts in Australia, South Africa and Canada. Mr. Kunda referred to a United Nations report which highlighted the difficulty of proving the responsibility of companies, even in cases where the company provided logistical support to armed forces, and called for a mechanism within the United Nations to bring justice in cases where companies violate human rights.

46. Antonio Sergio Escrivão Filho (Legal Advisor, Terra de Direitos) drew attention to a pattern in which companies externalize risks by hiring or creating external third party enterprises in order to avoid liability for human rights violations.

47. Katherine Gallagher (Senior Staff Attorney, Center for Constitutional Rights) highlighted legal and practical barriers for victims seeking access to judicial remedy in cases against transnational corporations, namely: the significant amount of work involved in pursuing such cases; arguments of *forum non conveniens* and immunity by companies; and high costs, personal risks and the difficulty of finding lawyers to take on the cases.

48. Gabriela Quijano (Amnesty International) addressed barriers to access to judicial remedy, including inequality of arms; the complexity of corporate structures; difficulties in executing judgments; political obstacles; the right to remedy being curtailed by foreign investors who shaped the regulatory regime; lack of access to information; and jurisdictional challenges.

49. Laurel Bellows (President, American Bar Association) highlighted the crucial role of the justice system for democracy and that the judicial system was at risk even in developed countries. She pointed to the lack of a coordinated voice as the greatest barrier to access to judicial remedy.

50. Interventions from the floor addressed the importance of class actions; whether the jurisdiction of the International Criminal Court could be extended to business enterprises; whether the Working Group could receive complaints from victims; the need to raise awareness of the Guiding Principles among States and specifically among judges; the influence that some companies may have over courts; the “black-listing” of companies; the relevance of the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights to the discussion; and the complementarity between national and international redress.

51. Mr. Addo pointed to the significance of the smart policy mix prescribed by the Guiding Principles as a key factor in taking account of the complementary value of non-judicial remedies in ensuring effective access to judicial remedy.

## **E. Access to non-judicial remedy**

52. The session facilitator was Caroline Rees, Chief Executive Officer and President, Shift.

53. Natalie Bridgeman (Executive Director, Accountability Counsel) underscored that it was unrealistic to assume that vulnerable communities could access international grievance mechanisms on their own, and noted that communities must be given every possible advantage to help them to be on equal footing with the company they are filing a complaint against.

54. Hege Røttingen (Head of Secretariat, National Contact Point for the OECD Guidelines, Norway) highlighted that national contact points could provide a neutral, bilateral avenue for companies and affected persons in a non-confrontational process that promoted learning and was forward-looking. She stressed that consensus could not be achieved if one party felt inferior, and that the relevant guidance should be translated into local languages. She also spoke of the limits of mediation, noting that grave human rights violations should be addressed in courts.

55. Mike Hosillos (Vice President for Corporate Services, SN Aboitiz) provided an overview of the company's experience of dam building in the Philippines, and the use of mediation processes to engage with affected indigenous communities. These processes focused on building capacity and levelling the playing field in order to build mutual trust and respect among stakeholders.

56. Laretta Lamptey (Commissioner, Commission on Human Rights and Administrative Justice, Ghana) shared the experience of using mediation where communities had complained about environmental and resettlement issues in the context of mining. She also noted the importance of having the power to adjudicate if necessary.

57. Oleg Sapozhnikov (External Affairs Manager, Sakhalin Energy) reported on how operational-level grievance mechanisms had helped build trust with local communities. He highlighted four elements of effective grievance mechanisms: procedures for logging grievances; traceable process and transparent response time; immediate reaction to grievances involving heightened human rights risks; and ensuring that sub-contractors are aware of the grievance procedures.

58. Felipe Burgueño (Centre for Reflection and Action on Labour Rights) shared experiences from the electronics sector in Mexico, where use of non-judicial grievance mechanisms had reduced the time to settle complaints raised by workers.

59. Steve Gibbons (Director, Labour and Human Rights, Ergon Associates) gave an overview of the London Olympics grievance mechanism, where the majority of complaints received related to labour standards in the supply chain, noting the importance of transparency for generating change.

60. Issues raised from the floor included the need to frame grievance mechanisms in human rights terms; that operational-level grievance mechanisms could not substitute stakeholder engagement and collective bargaining processes; the need to include trade unions in monitoring processes; accessibility; how to incentivize companies; and the role of non-governmental organizations in disseminating information.

61. Ms. Guáqueta highlighted the need to identify the key elements of what constitutes an effective remedy.

#### **IV. Challenges in the implementation of the Guiding Principles: parallel sessions**

##### **A. Challenges to implementing the State duty to protect**

62. The session facilitator was Mark Taylor, Senior Researcher, Fafo.

63. Richard Howitt (member of the European Parliament's Corporate Social Responsibility Committee) highlighted challenges: the disjunction between agreements made at the United Nations level and "ownership" in capitals; legislation being more controversial and constrained at the stage of drafting than at the stage of implementation; the problem of "compartmentalization" and the need to build the capacity of regulators; and how to turn State duty into concrete requirements for companies.

64. Gretel Orake (Manager for Technical Assessments, Mineral Resources Authority, Papua New Guinea) highlighted the need for capacity-building on how to implement the Guiding Principles in practice.

65. Gilbert Maoundonodji (representative, African Commission on Human and Peoples' Rights, Working Group on Extractive Industries, Environment and Human Rights Violations), highlighted the need to compile national strategies and to focus on long-term protection of rights.

66. Liang Xiaohui (Chief Researcher, China National Textile and Apparel Council; lecturer in business and human rights, Peking University), noted that human rights due diligence was largely left to Chinese companies as a business decision, but that human rights-related due diligence had recently become a concern for investments, particularly by State-owned enterprises.

67. Anita Ramasastry (University of Washington School of Law) stressed that States should use legislation to require due diligence by companies, including with regard to transparency in the supply chain and the need to indicate whether products are conflict free or not. She also highlighted the need for creating a multilateral mechanism, and stressed that States should address the impunity of corporations under international law.

68. Interventions from the floor addressed issues of conflict zones; the scope of OECD national contact points; and the question of a legally binding instrument.

69. Mr. Addo noted the compelling nature of some of the challenges discussed at the sessions and urged stakeholders to work together as partners in responding to those challenges. On the issues of the further development of the Guiding Principles, he suggested a continuing review of existing developments with regard to implementation, while not precluding longer-term developments of possible binding instruments.

## **B. Challenges to implementing the business responsibility to respect**

70. The session facilitator was Kathryn Dovey, Director, Global Business Initiative on Human Rights (GBI).

71. Keiichi Ushijima (Global Corporate Social Responsibility Manager, Hitachi) pointed to the challenges of applying a single policy to the complex system of the corporate group and establishing a due diligence programme.

72. Geetanjali Mukherjee (Research Fellow, Singapore Management University) responded that there was a clear need for training in human rights and the Guiding Principles among employees, and noted the challenge of lack of guidance from States to businesses, including with regard to reporting requirements.

73. Ron Popper (Head of Corporate Responsibility, ABB) underscored challenges of putting in place a human rights policy, assessing effectiveness of due diligence processes, and determining what action to take in case of non-compliance, as well as of ensuring coherence.

74. Jim Baker (Coordinator, Council of Global Unions) responded that human rights due diligence was very different from what companies had been doing. He highlighted that

challenges existed particularly in relation to freedom of association and collective bargaining, and warned against focusing on the “business case” for human rights due diligence – respecting rights was a responsibility, and not a matter of whether it made business sense.

75. Tony Khaw E Siang (Director of Corporate Social and Environmental Responsibility, Flextronics) shared the experiences of implementing due diligence processes within the company. He highlighted the challenge of the industry being audit-driven, which tended to take the attention away from the implementation and improvement process.

76. Viviane Schiavi (Senior Policy Manager, Corporate Responsibility and Anticorruption, International Chamber of Commerce) responded that the Chamber’s member companies reported several challenges in implementing the corporate responsibility to respect: lack of leverage in business relationships; difficulties in countries where there was no effective human rights legislation; evaluation of due diligence systems being time consuming; and the need for a conducive environment that should be created by governments.

77. Liesel Filgueiras (General Manager, Corporate Social Responsibility, Vale) focused on challenges relating to providing access to remedy, such as: the need to promptly respond to community complaints to avoid escalation; the difficulty of implementing a consistent approach on a global scale; making sure that all complaints were addressed through proactive engagement and through a facts-based approach; and the challenge of finding adequate training and human rights partners.

78. Christine Jesseman (Director, Pro Bono and Human Rights, DLA Cliffe Dekker Hofmeyr) responded that there was an international framework for access to remedy but that companies were operating within a domestic cultural and legal context. She also observed that States were implementing law without necessarily knowing how it would work.

79. Interventions from the floor addressed the need to maintain flexibility and avoid a one-size-fits-all approach; the need to understand the local context in order to promote the corporate responsibility to respect effectively; the intersection between State duty and corporate responsibility and the need for a consistent global approach; and the need to avoid mistakes made in the past with auditing and corporate social responsibility.

80. Ms. Jungk noted that, while the Working Group affirmed the non-voluntary nature of the corporate responsibility to respect, it was also acutely aware that incentives for good human rights practice, and disincentives against poor practice, would play a role in securing full corporate respect for human rights.

### **C. Challenges to the role of civil society in advancing implementation of the Guiding Principles**

81. The session facilitators were Mariette van Huijstee (Senior Researcher, SOMO) and Christopher Avery (Director, Business and Human Rights Resource Centre). The moderator was Jyoti Sanghera (Chief, Human Rights and Economic and Social Issues Section, OHCHR).

82. Ms. Kweitel indicated that a recent survey had underscored that most human rights activists in the South were not aware of the Guiding Principles; however, once they had been made aware, two thirds had indicated that the principles could be useful. She noted that the non-binding nature of the Guiding Principles and the lack of a specific focus on minorities and indigenous peoples in the third pillar were seen as weaknesses by some

human rights organizations. She proposed that the Working Group focus on implementation of the third pillar and consider receiving complaints from affected persons.

83. Ms. Stothard provided examples of the range of business-related human rights impacts reported in South-East Asia: land grabbing, confiscation by big enterprises, cases of abductions, torture and extrajudicial killings. She noted that despite the current interest in Myanmar, there had been cases of suppression against local populations protesting against mining activities and concerns that business activities may reignite ethnic conflicts.

84. Sergey Solyanik (Crude Accountability) gave examples of business-related human rights impacts in Kazakhstan. He argued that the Guiding Principles were not being implemented by the authorities in the region due to the lack of political will and that there was little chance that businesses would start implementing them by themselves.

85. Wellington Chibebe (Deputy Secretary-General, International Trade Union Confederation) stated that many business-related human rights violations in Africa are linked to the fact that businesses pressure politicians to restrict labour rights and implement business-friendly laws. He stressed that the Guiding Principles contained many elements that were already in ILO standards and fundamental principles and noted their complementarity. He also commented that business respect for human rights was incompatible with investing in the informal sector.

86. Interventions from the floor addressed: the need to ensure that affected people are at the centre of the business and human rights discussion and meaningfully involved in the annual Forum; the increasing criminalization of human rights defenders; how to apply the Guiding Principles in cases where both business and the State are causing human rights impacts; the need for a “good news” case where the Guiding Principles help achieve an effective outcome for affected communities; the fact that it was in the longer term business interest to ensure that past abuses are addressed.

87. Pavel Sulyandziga, member of the Working Group, stressed that the Guiding Principles represented something new in respect of human rights and business and current strategic opportunities.

#### **D. Challenges to implementation by the United Nations system**

88. The session facilitator was Ursula Wynhoven (Head, Policy and Legal, Global Compact Office). The moderator was Pierre Sané (President, Imagine Africa; Global Compact Board Member).

89. Lene Wendland (adviser on business and human rights, OHCHR) presented the recent report of the Secretary-General (A/HRC/21/21 and Corr.1), in which the Secretary-General recommended embedding the business and human rights agenda into all United Nations coordination mechanisms, and integrating the Guiding Principles at country level and in the work of different agencies, funds and programmes. She pointed to the role of the United Nations in addressing the risk of fragmentation and the huge capacity-building challenges.

90. Ms. Wynhoven provided an overview of the Global Compact’s mandate to advocate business respect and support for human rights, highlighting the work of the Global Compact Human Rights Working Group on good practice dissemination. She stressed the importance of the development agenda beyond 2015 and the need to engage new audiences.

91. Eija Hietavuo (Corporate Social Responsibility Specialist, United Nations Children’s Fund (UNICEF)) noted that many companies asked for guidance about how to incorporate children in the framework, and presented the Children’s Rights and Business Principles developed by UNICEF, the Global Compact and Save the Children.

92. Sir Mark Moody-Stuart (Chairman, Foundation for the Global Compact) responded that the Global Compact should assist companies to embed the Guiding Principles in their daily activities. He noted that business understood anti-corruption and environmental issues, but found human rights difficult. He emphasized the importance of the Global Compact Local Networks for progress on the ground, in collaboration with OHCHR, the United Nations Development Programme and Resident Coordinators.

93. Heba Mostafa (Second Secretary, Permanent Mission of the Arab Republic of Egypt to the United Nations Office and other International Organizations) responded that the key word seemed to be capacity-building, but that there was also a need to define capacity-building more accurately.

94. Interventions from the floor addressed the need to integrate labour rights issues; the low levels of awareness of the Guiding Principles; the need to avoid duplication with other efforts; and capacity-building in politically sensitive environments. Participants were also reminded that the Committee on the Rights of the Child was releasing a general comment on State obligations regarding the impact of business on child rights in early 2013.

95. Ms. Guáqueta stressed that the main message was to ensure coordination and to avoid fragmentation within the United Nations system.

## **E. Conflict-affected contexts**

96. The session facilitators were Gerald Pachoud (Senior Advisor to the Assistant Secretary-General, United Nations Peacebuilding Support Office) and Scott Jerbi (Geneva Academy of International Humanitarian Law and Human Rights).

97. Daniel Baer (Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor, United States) highlighted that making information available to Governments and the broader public was one avenue for productively engaging with business and human rights requirements, citing the Dodd-Frank Act as an example of progress. He stated that the goal was to engage companies in determining how they design policies and operations in conflict environments to avoid complicity in human rights abuses. That required addressing the issue as a management rather than legal problem. He suggested that “white listing” and screening of investments by credit agencies could be useful tools.

98. Daniel Avila Camacho (Director, Presidential Programme for Integrated Mine Action, Colombia) highlighted the challenge of communication, where initiatives such as the multi-stakeholder Guías Colombia had aimed to ensure coherence in ongoing efforts on human rights and public policy. He stressed that policy coherence, dialogue and joint efforts were crucial for moving forward. He proposed that the Working Group get involved with a working group set up by Colombia in order to engage with businesses on policies and accountability mechanisms.

99. Herbert P. Mcleod (Presidential Adviser, Sierra Leone) noted the need to understand how States function. While more State collaboration was needed, it should be targeted to the people who do the day-to-day work. He proposed that the Guiding Principles be introduced into the African Peer Review Mechanism. He also cautioned against using performance assessments and box-ticking, which might produce unreliable perceptions of good practices.

100. Ambassador Claude Wild (Head of Human Security Division, Federal Department of Foreign Affairs, Switzerland) proposed a move from the notion of business having a right to operate in conflict zones, to the notion of having the privilege to operate in the area. States should convince business actors that multi-stakeholder initiatives, such as the Voluntary Principles on Security and Human Rights, are the way forward. He stressed that

the industry should not be scared away from investing where investment was needed, and that it was key to motivate companies to undertake due diligence and put grievance mechanisms in place as part of their business plan.

101. Interventions from the floor addressed the risks of negative impacts of initiatives such as the Dodd-Frank Act; the need for more guidance on how to implement the Guiding Principles in conflict-affected areas; more consistent guidance on what constituted high-risk areas; the alignment of the Voluntary Principles with the Guiding Principles; and the need to identify lessons learned by States in exercising extraterritorial jurisdiction to ensure access to remedy.

102. Ms. Guáqueta noted that the Working Group had recognized the importance of the topic and that the issues raised, including transitional justice and reparations, assessing impacts of benchmarks such as those set by the Dodd-Frank Act and Myanmar investment guidelines, and how to level the playing field by using tools such as the OECD due diligence guidance for conflict minerals, all merited attention.

## **F. Small and medium-sized enterprises**

103. The session facilitator was Aleksandar Nikolov (Senior Corporate Responsibility Expert, European Commission project; President of the National Coordinating Body on Corporate Social Responsibility, the former Yugoslav Republic of Macedonia).

104. Mr. Dodd presented the European Union-supported guide to human rights for small and medium-sized enterprises (SMEs), based on the Guiding Principles. He stressed that SMEs – the largest category of enterprises – constituted a large and varied group, entailing differences in how to implement the corporate responsibility to respect in practice. Arguably, the most influential entity in promoting human rights at the level of SMEs were other SMEs, rather than the Government or international organizations.

105. Brent Wilton (Secretary-General, International Organisation of Employers) cautioned that there was a need for realistic expectations and stressed that the State had to introduce the legal framework in which SMEs could function accordingly. He pointed to the need to understand cultural and contextual differences and to make it easy for SMEs to understand the Guiding Principles.

106. Shaffi Manafa (Focal Point, Global Compact Local Network, Uganda) highlighted that there was no awareness of human rights among SMEs in Uganda, and that there was a clear need to raise awareness and use locally adapted tools, which could be done through the Global Compact.

107. Amanda Romero-Medina (Business and Human Rights Resource Centre) referred to Latin America and pointed to the high presence of illegal businesses, for example in the mining sector. She highlighted challenges, including the low willingness among SMEs to respond to complaints from victims, and argued that it was necessary that they understand the language of human rights and their obligatory nature.

108. Mr. Liang noted that in China, SMEs comprised more than 60 per cent of the gross domestic product and more than 80 per cent of employees. Since the 1990s, export-oriented companies had been referring to human rights and large corporations had contributed to raising awareness, but locally oriented SMEs did not accept human rights audits. He proposed two models for implementation of the Guiding Principles: through chambers of commerce and industry associations (horizontal implementation); and through value chains (vertical implementation).

109. Ricarda McFalls (Chief, ILO Programme on Multinational Enterprises and Social Policy) informed the session that ILO offered support to all stakeholders, and specifically

for business, on implementation of labour standards via a helpdesk for companies. She noted that there was a low level of awareness of human rights in general, not only of the Guiding Principles, and that there was a need for basic human rights education as well as building Government capacity.

110. Interventions from the floor included comments on the role that national human rights institutions could play, the role of the finance sector in the debate and the need for more practical guidance on implementation of the Guiding Principles.

## **G. Business affecting indigenous peoples**

111. The session facilitator was Aidan Davy, Director, Reporting and Assurance/Social and Economic Development, International Council on Mining and Metals.

112. James Anaya, Special Rapporteur on the rights of indigenous peoples, noted that the Guiding Principles opened new opportunities for advancing the rights of indigenous peoples, but that there were many challenges ahead. He highlighted that there was high-level acceptance by States and businesses of the Guiding Principles, but limited understanding of indigenous peoples' rights and obligations to protect their rights. He mentioned that he would be launching an online consultation forum with regard to indigenous rights and extractive industries, and suggested that new and different models for partnerships and business practices needed to be examined.

113. Inés Andrade (Coordinator of Social Standards, Cerrejón Coal) explained that the company had operated in an indigenous context for more than 30 years and that complying with the law was not enough. She identified several challenges: decentralized organization of the indigenous community; dealing with legacy issues because of the lack of initial impact assessment; culturally appropriate engagement; dealing with legal pluralism; the fact that the concept of significant engagement was ambiguous (grievance mechanisms could be helpful in that area); and the internal challenge of promoting cultural sensitivity across all levels of the company.

114. Joan Carling (Secretary-General, Asia Indigenous Peoples Pact) noted widespread land-grabbing in Asia from indigenous peoples under the pretext of national development, and criminalization and killings of indigenous leaders. Remedy was often lacking or incomplete, and loss of cultural heritage could not be compensated. She suggested that there was a need to undertake culturally appropriate consultations with indigenous peoples as part of due diligence; to overcome barriers to remedy; to ensure legal recognition of indigenous peoples and their rights; to take special measures to address conflicts between business and indigenous peoples; to remove military groups from conflict areas; and to build the capacity of indigenous groups.

115. Megan Davis (member of the Permanent Forum on Indigenous Peoples) noted three challenges: lack of awareness and understanding of indigenous rights; lack of understanding of the concept of free, prior and informed consent; and the implementation gap concerning the respective responsibilities of States and business.

116. Leonardo A. Crippa (Senior Attorney, Indian Law Resource Center) stated that a key challenge was the lack of rule of law regarding private sector projects taking place on indigenous peoples' land or affecting indigenous peoples' resources. He suggested that multilateral development banks had a responsibility to address indigenous peoples' rights in projects they funded.

117. Interventions from the floor addressed several issues: the need to treat indigenous peoples on equal footing with Governments and business; the challenge of identifying who

rightfully represented various indigenous groups; and the need for a legally binding instrument.

118. Mr. Sulyandziga argued that the Guiding Principles should be seen through the existing system for protecting indigenous peoples' rights. He informed participants that the Working Group's report to the General Assembly in 2013 would focus on indigenous peoples.

## V. Special focus sessions

### A. The Guiding Principles and new audiences – challenges and opportunities: perspectives from Global Compact participants and civil society

119. The session facilitator was Lauren Gula (Global Compact). The moderator was Pierre Sané.

120. Heloisa Covolan (Corporate Social Responsibility Manager, Itaipu Binacional) noted slow implementation of the corporate responsibility to respect human rights in Brazil, and welcomed the translation of the Guiding Principles into Portuguese. She argued that Brazilian companies only recognized work-related human rights, but that the Guiding Principles presented opportunities for business engagement on the responsibility to respect human rights in current initiatives.

121. Magdalena Slavejkova (Human Resources Manager, TITAN Group) highlighted the challenge of integrating the Guiding Principles into business and noted the lack of practitioners with human rights expertise in the business community. She called for the dissemination of best practices.

122. Rajiv Williams (Corporate Head, Corporate Social Responsibility, Jindal Stainless Ltd.; Global Compact Network, India) pointed to the challenge of capacity gaps and the need for expertise. He suggested a need for national awareness campaigns to promote the Guiding Principles and to bring SMEs into the fold.

123. Reinford Mwangonde (Executive Director, Citizens for Justice) stressed that many in Governments and industries were not aware of the Guiding Principles, and highlighted their non-binding nature as problematic. However, he suggested that the principles provided opportunities for building trust among key stakeholders.

124. Liu Kaiming (Institute of Contemporary Observation) noted that the main challenge in the Chinese context was to find the right language to promote human rights, which depended on linguistics, company cultures and Governmental sensitivities, and also mentioned the challenge that corporate social responsibility was still seen through the lens of charity.

125. Respondent Gwendolyn Remmert (Global Compact Local Network, Germany) called for a more easily accessible version of the Guiding Principles and mentioned that the German Global Compact Network had a multi-stakeholder programme on human rights where participants could engage in a safe atmosphere.

126. Respondent Katryn Wright (GBI) shared the experience of the GBI platform for business-to-business learning on the Guiding Principles. Surveys indicated that the awareness of human rights among groups of companies was high, but awareness and capacity gaps remained. She highlighted the role of human rights champions in reaching out to new audiences.

127. Interventions by other participants highlighted the need to involve trade unions in the business and human rights agenda; the need to find the right operational language; and the need for capacity-building.

128. Ms. Jungk stressed that the agreement on the Guiding Principles presented unique opportunities, but that the Working Group was well aware that dissemination was the biggest immediate challenge. She highlighted industry organizations and the Global Compact as critical multipliers in support of dissemination.

## **B. The role of public finance in advancing the Guiding Principles**

129. The session facilitator was OHCHR. The moderator was Mac Darrow (Chief, Millennium Goals Development Section, OHCHR).

130. Maria da Cunha (Lead Safeguards Specialist, Inter-American Development Bank – IDB) stated that IDB was working on further integrating human rights within country programming and noted that protection of human rights was articulated in various safeguard policies, its consultation policy and the accountability mechanism, addressing the same fundamental issues as the Guiding Principles.

131. Eleni Kyrou (Social Development Specialist, European Investment Bank – EIB) highlighted that the Charter of Fundamental Rights of the European Union provided the human rights frame of reference for the EIB, together with the Guiding Principles. The EIB safeguard policy was currently being revised. Internal consultation was expected in 2013, followed by external consultation. Ms. Kyrou pointed to challenges such as context for implementation and specificity of guidance, with a need to translate standards operationally.

132. Motoko Aizawa (Advisor, Sustainable Development Network, World Bank Group) explained that the IFC Sustainability Framework for private clients recognized the business responsibility to respect human rights, and that the World Bank performance standards also included human rights requirements and concepts. She noted that those standards were often taken up by other groups and could also apply to public-private partnerships. She reported that the World Bank had kicked off phase one of updating its safeguard policies and was due to finish mid-2014.

133. Respondent Kristen Genovese (Senior Attorney, Center for International Environmental Law) stressed that States had human rights obligations as result of their involvement in the World Bank, which needed to be reinforced in the Bank's governing bodies. She called for enhancement of World Bank safeguard policies, by incorporating mandatory human rights due diligence based on international human rights standards and reexamining the IFC standard on indigenous peoples with respect to free, prior and informed consent.

134. Respondent Karyn Keenan (Halifax Initiative) focused on the role of domestic export credit agencies. She recalled that the Guiding Principles advised States to encourage and/or require human rights due diligence by such agencies, as well as provide for adequate grievance mechanisms, and argued that States had failed to comply. She argued that the OECD common approaches to export credit agencies, while currently referencing human rights, did not require robust due diligence by credit agencies and that their non-binding status made them ineffective.

135. Interventions from the floor expressed support for the OECD common approaches and addressed the need for capacity-building. Questions were raised regarding the policies of international finance institutions on the right to water and land tenure.

136. Ms. Guáqueta stressed the importance of internal coherence in public finance institutions, as well as collaboration between institutions to promote convergence.

### **C. Developing an agenda for comprehensive capacity-building on implementation of the Guiding Principles**

137. The session facilitator was Paul Redmond (Chair, Diplomacy Training Program).

138. Suon Bunsak (Cambodian Human Rights Action Committee) stressed the little-to-no knowledge of the Guiding Principles or business and human rights standards in Cambodia. In response to capacity-building needs, he suggested action at three levels: community (disseminating information), national (multi-stakeholder trainings and dialogue, advocacy networks and engaging media); and regional (regional exchange programmes).

139. Myriam Montrat (Canadian Human Rights Commission; Chair, ICC Working Group on Business and Human Rights) provided an overview of the ICC Working Group on Business and Human Rights, which was developing and implementing regional trainings on the Guiding Principles and working to promote multi-stakeholder collaboration.

140. Mr. Williams reported that the Indian Global Compact Network had established a CEO Forum on Business and Human Rights to bring the Guiding Principles forward and streamline business responses.

141. Ms. Kweitel noted that in some instances the implementation of the Guiding Principles started at a difficult point, referring to the situation of widespread corporate human rights abuses in Latin America. She noted that civil society organizations in Latin America were not aware of the Guiding Principles and stressed the need for civil society to monitor corporate activities. She called for a cross-cutting approach to build recognition of human rights throughout society.

142. Mauricio Lazala (Deputy Director, Business and Human Rights Resource Centre) said that the Business and Human Rights Resource Centre would establish a portal for Governments, businesses and civil society to share tools and experiences for implementing the Guiding Principles. He called on civil society organizations to contribute with relevant tools for that new hub.

143. Speakers from the floors highlighted a toolkit by SOMO, the Center for Human Rights and Environment and Cividep India for non-governmental organizations on how to apply the Guiding Principles; the need to train workers on their rights; the need to raise awareness of the Guiding Principles in the ASEAN region; and how to identify “best practice”.

### **D. The role of the finance sector**

144. The session facilitator was David Kinley (University of Sydney).

145. Aldo Caliarì (Director, Rethinking Bretton Woods Project, Center of Concern) argued that the financial sector required specific attention: it had systemic impacts on many areas in an increasingly interdependent world; it was not very visible, but the Guiding Principles still applied; and human rights impacts exacerbated by the financial sector may be outside the control of a particular company or entity. He suggested that bank capital requirements should be aligned with and reference a human rights framework.

146. Driekie Havenga (Ethics Officer, Nedbank) stated that the business case for human rights was sustainability. She explained that Nedbank had a helpline, an anonymous tipline,

a grievance mechanism and an independent ethics office to support the process, and that the Board of Directors was measured on its commitment to the Board's ethics statement.

147. Mr. Nieuwenkamp underlined that the financial crisis demonstrated demand for ethics in the financial sector. While the OECD Guidelines for Multinational Enterprises also covered the financial sector, it was urgent to understand how supply chain responsibility and due diligence applied to the financial sector. He also urged the need to identify good practices.

148. Ola Mestad (Chair, Council on Ethics, Norwegian Government Pension Fund – Global) explained that the Government Pension Fund excluded investments in chemical weapons and tobacco and in companies where there was an unacceptable risk that the company might contribute to serious unethical conduct, including human rights violations. He stated that the Guiding Principles provided additional legitimacy for recommendations to exclude companies from the Fund's portfolio. The due diligence elements of the Guiding Principles could also be used to guide the impact assessment processes. He argued that institutional investors could increasingly be an important influence on corporate conduct. Mr. Mestad proposed that the Principles for Responsible Investment explicitly include human rights and promote the Guiding Principles.

149. Bennett Freeman (Senior Vice President, Sustainability Research and Policy, Calvert Investments) noted that there was growing recognition by mainstream investors that human rights were also about risk. He stated that the Guiding Principles offered a template for risk assessment, in particular with respect to due diligence. He highlighted the natural alliance between non-governmental organizations and investors, and argued that they could play a vital role in pressing companies to pick up the Guiding Principles.

150. Interventions from the floor addressed the issue of what leverage banks could exercise through their lending and what options existed; the role of speculation vis-à-vis human rights; how to ensure uptake of good practices by a greater share of the sector; how to engage financial regulators to be informed by human rights considerations.

## **E. Principles for responsible contracts<sup>3</sup>**

151. The session facilitator was Andrea Shemberg (previously advisor to former Special Representative John Ruggie).

152. Ms. Aizawa commented on the background to the development of the principles for responsible contracts by referring to the BP pipeline project in 2003, where Amnesty International had found that the contract tied the hands of the Government to implement new laws for social and environmental issues. An IFC project also showed that the use of stabilization clauses varied significantly between sectors.

153. Antonio Carvalho Coelho (Senior Counsel, Exploration and Production, Total) explained that, at first, he had been skeptical about the principles for responsible contracts, since the company already had health and environmental policies and anti-corruption clauses. He had first seen this as an additional layer of rules, but had been convinced of their usefulness.

154. Lorenzo Cotula (Senior Researcher, International Institute for Environment and Development) stated that the quality of investment was critical. It was important to

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<sup>3</sup> Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators, developed by former Special Representative John Ruggie (A/HRC/17/31/Add.3).

scrutinize contracts in order to safeguard people. However, in reality, human rights were often not looked at during negotiations.

155. Benoit Palmer (Senior Corporate Counsel, Rio Tinto) reflected on obstacles to integrate human rights risk management into the company's projects: lack of awareness of the importance of social and environmental issues in contract negotiating teams; the sensitive nature of raising human rights issues with the Government; and the belief that increasing standards implied increasing costs. While the latter may be the case, he noted that the cost of not respecting human rights was unacceptable.

156. Mr. P. McLeod noted that the contracts principles were useful in internal discussions with his Government prior to negotiating with the company, while he noted specific challenges faced by post-conflict States.

157. Hafiz Mirza (Chief, Investment Issues Section, United Nations Conference on Trade and Development) commented on further obstacles: the capabilities of States and investors; the lack of knowledge of the principles for responsible contracts; and that different sectors raised different human rights issues for contracts.

158. Interventions from the floor addressed the role of national human rights institutions, sanctions on companies, access to remedies, and inclusion of non-judicial remedy mechanisms in the investment contract.

159. Mr. Pachoud concluded that contracts were a powerful tool, offering predictability and normativity to communities, States and investors. He noted that raising awareness of the principles for responsible contracts was important.

## **VI. Presentations by the Working Group**

160. In a session on global trends in the implementation of the Guiding Principles, Ms. Guáqueta highlighted the relevance of a repository of data for advancing the business and human rights agenda, given the need for accessible information and greater transparency. She shared some preliminary trends from two pilot surveys conducted by the Working Group: a questionnaire sent to States in October 2012, complemented by ongoing interviews; and a survey that was sent to corporations, developed and disseminated in cooperation with GBI, the International Chamber of Commerce, the International Organisation of Employers and the Corporations and Human Rights Project at the University of Denver. The final results of those surveys would be presented to the Human Rights Council in 2013.

161. In a session on the Working Group's approach to country missions, Ms. Jungk shared the lessons learned from the first country mission to Mongolia in October 2012. She also presented the outline of the Working Group's draft template for country missions, developed in collaboration with the Danish Institute for Human Rights, aimed at ensuring a systematic and balanced approach based on the Guiding Principles.

## **VII. Closing session**

162. The session moderator was John Morrison (Executive Director, Institute for Human Rights and Business).

163. In his closing remarks, the Forum Chairperson offered general observations: 18 months after the endorsement of the Guiding Principles, there were indications of good progress, the quickest responses being by collective actors; the era of declaratory corporate social responsibility was over – stating intentions was no longer good enough; the three

pillars of the Guiding Principles were complementary and could not be treated in isolation; the Guiding Principles served as a basis for further empowerment for affected groups; the Guiding Principles included both preventative and remedial measures – neither could be a substitute for the other; human rights grievances needed to be addressed early on; with regard to judicial remedy, exploring extraterritorial options for corporate accountability for involvement in human rights abuse was merited.

164. Members of multi-stakeholder panel offered their reflections on key outcomes of the Forum discussions.

165. Sir Mark Moody-Stuart highlighted the flexibility of the Global Compact networks – being half out and half in the United Nations – and their significant mass of members as having a key role in further implementation of the Guiding Principles. He also pointed to the potential role of the Principles for Responsible Investment and the Principles for Responsible Management Education.

166. Ms. Ramasastry noted the lack of evidence of action at the State level, and hoped to see more national plans of action. She also emphasized the need to clarify pillar three, and the need for transparency to guarantee civil society access to information, querying whether initiatives on the Guiding Principles could be linked to open Government initiatives.

167. Chief Wilton Littlechild, Chair, Expert Mechanism on the Rights of Indigenous Peoples, welcomed the decision by the Working Group to focus on indigenous peoples' issues. He proposed that going forward, the Special Rapporteur on the rights of indigenous peoples, the Permanent Forum on Indigenous Peoples and the Expert Mechanism could work together with the Working Group.

168. Mr. van Heerden shared experiences of global supply chains across many jurisdictions, noting that the financial crisis had only added to their volatility and created greater pressure within supply chains. He suggested there was a need to improve risk mapping in supply chains, and that all stakeholders had a duty to act and that no single actor could mobilize alone. Stakeholder engagement would be crucial going forward. He also emphasized the need for a safe space to discuss those issues.

169. Interventions from the floor highlighted that implementation would be key going forward, noting that there should be focus on all three pillars; the need to sustain the multi-stakeholder approach; the need to conduct regional consultations; the need to enhance understanding of States and business of free, prior and informed consent; the key role of national human rights institutions; the need to explore extraterritorial mechanisms for business responsibility; the need to avoid receding to the traditional corporate social responsibility approach; the right to freedom of association for workers; the need to strengthen links between due diligence and reporting requirements; the observation that the task of dissemination had just begun; the importance of operating environments and how corruption and large informal sectors affected implementation of the Guiding Principles; and the need to translate the Guiding Principles into more languages.

170. In conclusion, the Working Group offered their reflections on the Forum discussions and the way forward.

171. Mr. Sulyandziga affirmed that indigenous peoples were a priority for the Working Group.

172. Ms. Jungk noted challenges regarding micro-level implementation: how to get human rights into supply chains, how to get human rights mainstreamed across business departments and how to engage civil society organizations in a safe space. She underscored that there was a need to think about how to get the Guiding Principles into company systems and cultures and how to scale up efforts.

173. Mr. Addo noted the challenge relating to the low level of awareness among States of the Guiding Principles and urged States to take on a leadership role.

174. Ms. Guáqueta argued that there were a range of complementary measures that needed to be taken and stressed the need to consider the three pillars together. She also stressed that an agreement should be reached on addressing corporate involvement in international crimes and underscored the need for a multi-stakeholder approach. Ms. Guáqueta observed that there was an opportunity to work with financial organizations to strengthen human rights components of complaints mechanisms and to promote policy coherence. Finally, she stressed the need for training on the Guiding Principles across stakeholder groups.

175. Mr. Selvanathan, in his capacity as Working Group Chairperson-Rapporteur, closed the Forum. He thanked all participants and concluded that the Forum offered the best of the United Nations in providing an open, inclusive platform for dialogue. He stated that, going forward, the Working Group aimed to include regional consultations as part of the Forum process and encouraged participants to show the courage that was needed to take the Guiding Principles into new territory.

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