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corporations and other business enterprises

Fourteenth session

Geneva, 2–6 May 2016

Outcome of the fourteenth session of the Working Group on the issue of human rights and transnational corporations and other business enterprises

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I. Summary

1. The Working Group on the issue of human rights and transnational corporations and other business enterprises held its fourteenth session in Geneva, Switzerland from 2 to 6 May 2016.
2. During the session, the Working Group convened meetings and discussions on the following:
 - (a) The Working Group's priorities and projects for 2016 and 2017;
 - (b) Feedback on the two-day meeting (convened by the Working Group and the OHCHR Regional Office for South America) held in Santiago, Chile from 2 to 3 March 2016 to discuss public policies that promote responsible corporate behaviour;
 - (c) Three open consultation meetings, respectively with States and intergovernmental organizations, business associations, and civil society organizations, to consult on the Working Group's plans and to seek input on specific projects;
 - (d) Feedback on the Asia Regional Forum on Business and Human Rights, held in Doha, Qatar from 19 to 20 April 2016, and plans for the fifth annual Forum on Business and Human Rights to be held in Geneva, Switzerland from 14 to 16 November 2016;
 - (e) Other Working Group projects and meetings, including its proposed country visits; the Working Group's 2016 reports to the Human Rights Council and the General Assembly; and the Working Group's cooperation with various UN agencies including UNECE, UNCTAD and the International Labour Organization (ILO).
3. The present report summarizes some of the key items discussed.

II. Working Group priorities and projects for 2016 and 2017

4. The Working Group reiterated its call to States to develop national action plans on business and human rights (NAPs) as it regards them as a key tool to help increase implementation of, and awareness of, the UN Guiding Principles on Business and Human Rights. It reiterated its view that a national action plan process is a continuous and iterative process, meaning that it should be revised on a regular basis, and not viewed purely as a one-off task. It stated that a good baseline study would enable a State to discover any gaps in domestic legislation and map the full range of existing legislation that applies to business and human rights issues. The Working Group emphasized the importance of stakeholders using its Guidance on National Action Plans¹ which was developed and adopted following consultation with stakeholders. It noted that several States are in the final stages of their NAP processes and mentioned that it looks forward to seeing the NAPs being prepared by, amongst others Germany, Switzerland, Kenya, Mozambique, and the USA. The Working Group also noted the important work carried out by national human rights institutions and civil society organisations in laying the ground work for NAP processes in their respective States and regions. The Working Group noted that it would launch a further update to its Guidance on National Action Plans at the fifth annual Forum on Business and Human Rights in November 2016, following on from consultations with stakeholders that have used the first version of the guidance which was published in November 2014 and the second version of the guidance which was published in November 2015.

¹ The Working Group's guidance document is available at:
http://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf.

5. The Working Group discussed its forthcoming country visits to the Republic of Korea from 23 May to 1 June 2016 and to Mexico from 29 August to 7 September 2016.

6. The Working Group discussed its priorities for 2016 and the start of 2017 and noted that two new members of the Working Group will have joined by August 2016 and that they will each have interests and priorities that they will wish to develop within the Working Group and therefore the priorities for the end of 2016 and start of 2017 would be discussed during its 15th session to be held in September 2016. Mr. Surya Deva, who participated in the 14th session as the newly appointed member for the Asia region, indicated his intention to focus on access to remedy and women's rights.

7. Working Group members provided updates on the meetings and outreach exercises they have undertaken since the thirteenth session.

III. Feedback following the two-day meeting held in Santiago, Chile from 2 to 3 March 2016

8. The Working Group reflected on the two-day meeting that it held in Santiago, Chile from 2 to 3 March 2016 with the OHCHR Regional Office for South America. The meeting was held at the Economic Commission for Latin America and the Caribbean. The meeting, titled "Regional consultation for Latin America and the Caribbean on public policy for the implementation of the United Nations Guiding Principles on Business and Human Rights in the Framework of the 2030 Agenda on Sustainable Development", had an emphasis on the implementation of the UN Guiding Principles on Business and Human Rights.

9. The feedback received by the Working Group noted that the meeting created a valuable space in which participants could share cross-regional practice and lessons learned on the implementation of the UN Guiding Principles on Business and Human Rights and the development of NAPs. The Working Group appreciated the fact that, with the support of the OHCHR Regional Office for South America, it would be able to present a report of the meeting to the Human Rights Council in order to more widely disseminate the information shared during the meeting.

10. The Working Group reiterated its wish to convene additional regional meetings to facilitate dialogue and knowledge sharing.

IV. Forthcoming reports to the Human Rights Council and the General Assembly

11. The Working Group discussed the substantial work undertaken in preparing its forthcoming report to the 32nd session of the Human Rights Council, which focuses on the duties of States to prevent human rights abuses involving State-owned enterprises (SOEs). SOEs are increasingly important actors in the global economy. Yet their human rights impacts and responsibilities are unclear, and so are the duties of States in their regard. The Working Group hopes that its report will address existing governance and protection gaps and help States to implement measures to ensure SOEs fully respect human rights. It also expressed its gratitude to the States that responded to its 2015 State survey on the State as an economic actor (including SOEs).

12. In relation to its forthcoming report to the 71st session of the General Assembly, the Working Group discussed plans for its report on human rights in global supply chains, including the scope and focus of the report and the stakeholders it aimed to consult. The Working Group reiterated the importance that its reports to the Human Rights Council and

the General Assembly be used as a springboard for further engagement and for promoting progress in the areas covered by the reports.

13. The Working Group reflected on possible topics of focus for its 2017 reports to the Human Rights Council and General Assembly. It noted its interest in working on, amongst other issues, small and medium sized enterprises and the uptake by such enterprises of the UN Guiding Principles on Business and Human Rights, and access to remedy.

V. Asia Regional Forum and the fifth annual Forum on Business and Human Rights

14. The Working Group, in accordance with its mandate from the Human Rights Council to guide the annual Forum on Business and Human Rights, discussed plans underway for the fifth annual Forum, to be held in Geneva, Switzerland, from 14 to 16 November 2016.

15. The Working Group noted that following on from its discussion of the topic during its thirteenth session, the title of the annual Forum would be “Leadership and Leverage: Embedding human rights in the rules and relationships that drive the global economy”. The Working Group reflected that the thematic focus of the annual Forum on “leadership” and “leverage” would enable a thorough examination of the “push-pull” factors relating to effective implementation of the three pillars of the UN Guiding Principles on Business and Human Rights by both States and business.

16. The Working Group observed that the Forum programme should facilitate practice-focused discussions on these aspects in relation to:

(a) The need for States to demonstrate greater leadership in protecting the human rights of those who suffer business-related abuse and in providing an effective remedy when harms occur. As powerful economic actors they should “lead by example” in their procurement activities and in the conduct of entities they own, control and/or support, including SOEs, export credit agencies, development finance institutions and sovereign wealth funds. States can also exercise significant leverage in their dealings with other Governments and in multilateral fora, across their own Government departments and agencies, and in their relationships with private businesses and others.

(b) The need for businesses to better understand and exercise leadership and leverage across their supply and value chains and in their relationships with various stakeholders to ensure that they fully respect human rights and also manage risk.

(c) The role of international and regional bodies; finance, industry and trade organisations; employer federations; business associations; lawyers; consultants; affected communities and other civil society actors in promoting leadership and ensuring that leverage is exercised for the benefit of human rights.

(d) The relationship between “the supply of money and financial markets” and business and human rights. This includes a deeper look at financial incentives and penalties; financial and non-financial tools and risk analysis; the role of financial regulators, investors, banks and finance institutions; public financing and procurement activities; trade and investment; corruption; and tax regimes.

17. The Working Group observed that a call for applications for parallel sessions, led by external organisers, for the fifth annual Forum had recently been placed on the Forum website, along with the criteria the Working Group will apply when selecting parallel sessions. The Working Group also noted that the annual Forum programme would include a mixture of formats including high-level plenaries, case study discussions, training sessions,

and panel discussions including space for discussion of new tools and initiatives, salient issues and practical implementation challenges.

18. The Working Group reiterated its pleasure that the annual Forum has become the primary international meeting for the discussion of business and human rights issues. It renewed its encouragement for all States to promote attendance at the Forum by experts and policy-makers from capitals, and to businesses and business associations to promote attendance by a wider range of business representatives. The Working Group remained committed to its goal of achieving a representative balance of stakeholder participation (including as speakers) from States, business, civil society, and communities directly affected by business operations, and to increasing participation by those from the Global South.

19. The Working Group reflected on the Regional Forum on Business and Human Rights for Asia which was held in Doha, Qatar from 19 to 20 April 2016. The Working Group was pleased that the Regional Forum brought together some 400 participants and had achieved the goal of providing a platform for dialogue on some of the main business and human rights issues facing the Asia Pacific region. The high level of interest shown in the event underlined how the Working Group and the UN are uniquely placed to facilitate dialogue between States, business and civil society on the issue of business and human rights.

20. The Working Group reflected on the rich discussions of the Regional Forum, which had included 30 substantive sessions covering issues such as the rights of migrant workers, impacts of large-scale land acquisitions, garment sector supply chains, forced labour and human trafficking, the situation of human rights defenders, indigenous peoples and business, national action plans on business and human rights, multi-stakeholder and sector-wide approaches to corporate human rights due diligence, and access to remedy through judicial and non-judicial mechanisms. It also noted how the Forum had been a very timely opportunity to discuss mega sporting events and human rights, during which former SRSG on business and human rights, John Ruggie, presented his report commissioned by FIFA to help it align its policies and practices with the UN Guiding Principles on Business and Human Rights. This had provided a unique opportunity to engage with FIFA and the Supreme Committee for Delivery & Legacy of the Qatar 2022 World Cup.

21. The Working Group discussed feedback received and lessons learned. It observed that it had received very good feedback from participants (including in post-Forum blogs and media coverage) who highlighted the content-rich discussions, the high calibre of the speakers and the diversity of participants. The Working Group also noted its appreciation for the support provided by the State of Qatar and by the UN Human Rights Training Centre for South-West Asia and the Arab Region in Doha, Qatar.

22. The Working Group observed that holding a Regional Forum is an extra-budgetary activity and requires significant support from States in order to take place. It reaffirmed its wish to continue holding Regional Fora in different regions. It noted the need to be regionally balanced in its approach and that it had already held an African Regional Forum on Business and Human Rights in Addis Ababa during 2014, and a Regional Forum on Business and Human Rights for Latin America and the Caribbean in Medellín, Colombia during 2013.

VI. Meetings and briefings with stakeholders

23. The Working Group took the opportunity to hold bilateral meetings with Permanent Missions to discuss its work and its forthcoming country missions.

24. The Working Group met with the new Director of the Thematic Engagement, Special Procedures and Right to Development Division at OHCHR to discuss the work of the Working Group to date, and its projects and ambitions. The Working Group also met with OHCHR staff and received an update on the OHCHR-led project on access to remedy, which is supported by the Working Group. Specifically, the Working Group heard about the report and guidance for States on how to strengthen domestic legal remedies that will be presented to the 32nd session of the Human Rights Council.

25. The Working Group met with Office representatives of the ILO and discussed the on-going cooperation between the ILO and the Working Group. In particular they discussed the ILO's work on the MNE Declaration following the decision by the ILO's Governing Body to set-up a tripartite ad-hoc working group to review the MNE Declaration and the interpretation procedure², the recent ILC Report "Decent Work in Global Supply Chains", the Working Group's report to the 71st session of the General Assembly, plans for the fifth annual Forum on Business and Human Rights, the Working Group's plans for country visits to the Republic of Korea from 23 May to 1 June 2016 and Mexico from 29 August to 7 September 2016, and an update on the ILO's International Labour Conference to be held in June 2016 and the thematic discussion on value chains. The Working Group heard an update concerning the latest ILC Decent Work in Global Supply Chains discussions. The Working Group also discussed the role and support of the ILO in the development of NAPs.

26. The Working Group had a telephone meeting with representatives of the OECD in Paris, France to discuss areas of collaboration, including in relation to the annual Forum on Business and Human Rights to be held in Geneva, Switzerland from 14 to 16 November 2016, the forthcoming OECD conference on Responsible Business Conduct to be held in June 2016 in Paris, France, and the OECD's involvement in efforts to promote the UN Guiding Principles on Business and Human Rights among its constituencies.

27. The Working Group held a meeting open to all States and intergovernmental organizations. The meeting was attended by a number of State representatives which indicated to the Working Group the keen interest in its work. The meeting provided an opportunity for the Working Group to present its work since the thirteenth session and share its plans for the remainder of 2016. The Working Group discussed the Asia Forum on Business and Human Rights held in Doha, Qatar from 19 to 20 April 2016, its plans for the fifth annual Forum on Business and Human Rights, the Working Group's forthcoming reports to the Human Rights Council and the General Assembly, and planned for country missions.

28. The Working Group held a meeting with UNECE staff to discuss areas of collaboration in the context of the Sustainable Development Goals and the 2030 Agenda for Sustainable Development. The conversation focused on the UNECE's current work on public-private partnerships and its preparations for the tenth session of the United Nations Economic Commission for Europe Committee on Innovation, Competitiveness and Public-Private Partnerships, which will take place in Geneva, Switzerland, from 23 to 25 May 2016.

29. The Working Group held a consultation with civil society organizations and met with a range of stakeholders. Participants could attend by telephone which facilitated participation by stakeholders from outside Switzerland. The meeting provided an opportunity for civil society organizations to share their experiences with the Working Group and for the Working Group to hear about the initiatives that civil society

² http://www.ilo.org/gb/decisions/GB326-decision/WCMS_463215/lang--en/index.htm.

organizations are taking in the field of business and human rights. The meeting also provided a chance for the Working Group to share information about its work plan.

30. The Working Group held a consultation by telephone with representatives of a number of business associations that had provided feedback on the past annual Forum on Business and Human Rights and the Asia Regional Forum on Business and Human Rights. The meeting allowed the Working Group to gather input in relation to the plans for the 2016 annual Forum.

31. The Working Group held a meeting with Office representatives of UNCTAD to discuss areas of collaboration to build on the meeting held during its thirteenth session and to further consider ways to strengthen cooperation in the context of UNCTAD's work on responsible contracts, sustainable stock exchanges, investment and human rights, and global value chains.

32. The Working Group held a meeting with the Consumer Goods Forum to discuss areas for collaboration and the initiatives in the field of business and human rights by some of the members of the Consumer Goods Forum.

33. The Working Group held a meeting with a representative of the sustainability services department of RobecoSAM, to discuss how human rights are integrated into the RobecoSAM Corporate Sustainability Assessment (CSA) that is used for the Dow Jones Sustainability Indices. The Working Group noted that, since 2015, the CSA includes four questions addressing a company's commitment to human rights and covering whether a company has a corporate human rights policy, conducts human rights due diligence, conducts an assessment of potential human rights issues across its own operations or value chain, and publicly discloses progress on human rights issues to show how it is dealing with human rights issues. The Working Group also learned that RobecoSAM recently launched two new products measuring companies' activities in relation to gender diversity and children's rights, in response to requests from investors interested in these areas. The Working Group was pleased to hear that RobecoSAM offered to share lessons learned from the integration of human rights into its CSA work, and that it expressed an interest in focusing on SOEs in the future.

34. The Working Group held an audio-conference with a delegation of indigenous peoples' community leaders and local representatives from Colombia, Peru, Indonesia and Liberia, who were visiting London and Brussels to highlight the impacts of palm oil production on their communities, their lands and the environment. The call was organised with the support of the Forest Peoples Programme. The Working Group was grateful to hear the voice of affected communities and said it was willing to receive additional information from the communities.

35. The Working Group held an audio-conference with representatives of the Corporate Human Rights Benchmark to hear about the impact the Corporate Human Rights Benchmark is having and plans for future development.

VII. Chairperson and Vice-Chairperson

36. Dante Pesce served as Chairperson of the Working Group, and Pavel Sulyandziga served as Vice-Chairperson. For the period from 1 July to 31 December 2016, Pavel Sulyandziga will serve as Chairperson and Michael K. Addo will serve as Vice-Chairperson.