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Geneva, 26–30 September 2016

Outcome of the fifteenth 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 fifteenth session in Geneva, Switzerland from 26 to 20 September 2016.
2. During the session, the Working Group convened meetings and discussions on the following:
 - (a) The Working Group's priorities and projects for 2017;
 - (b) Regional consultations;
 - (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) Plans for the fifth annual Forum on Business and Human Rights to be held in Geneva, Switzerland from 14 to 16 November 2016 and a possible Regional Forum in 2017;
 - (e) Other Working Group projects and meetings, including its proposed country visits; and the Working Group's 2017 reports to the Human Rights Council and the General Assembly.
3. The present report summarizes some of the key items discussed.

II. Working Group priorities and projects for 2017

4. The Working Group discussed updates in relation to its work on national action plans on business and human rights (NAPs). It reaffirmed its wish to continue encouraging the development of NAPs as one of the means to promote the implementation of the Guiding Principles on Business and Human Rights, and also recalled that the Human Rights Council, in its resolution 26/22, encouraged all States to develop a NAP. The Working Group discussed the fact that it would launch a final version of 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. The final version of the Guidance would also take into account comments provided by States in their responses to the Working Group's 2016 State Survey which was issued after the fourteenth session¹. The Working Group noted with thanks the interest that States have shown in its survey.
5. The Working Group discussed its plans for two country visits during 2017, which were expected to be confirmed over the next months. The Working Group also decided to send requests to visit a number of States in preparation for future visits over the coming years.
6. The Working Group discussed its priorities for 2017, when it would give focused attention to the issue of access to remedy as well as the application of the Guiding Principles to small and medium sized companies. The Working Group also discussed its communications policy and approach in order to facilitate the Working Group's

¹ <http://www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx>.

intervention in cases of concern relevant to its mandate. The Working Group also noted that it was interested in exploring further issues relating to gender and women's rights, and banking and finance, as well as existing priority areas such as State-Owned Enterprises and the larger topic of the state as an economic actor, and NAPs. It resolved to continue its discussions on its priorities for the coming years during the inter-sessional period and at its 16th session to be held in Geneva during early February 2017.

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

III. Reports to the Human Rights Council and the General Assembly

8. The Working Group discussed the positive response to its report to the 32nd session of the Human Rights Council, which focused on the duties of States to prevent human rights abuses involving State-owned enterprises (SOEs). The Working Group noted its interest in expanding its work on the State as an economic actor, with a focus on Guiding Principles 5 and 6.

9. The Working Group reflected on the theme of its report to the 35th session of the Human Rights Council and decided that the report would focus on the uptake of the UN Guiding Principles on Business and Human Rights by small and medium sized enterprises.

10. In relation to its report to the 72nd session of the General Assembly, the Working Group discussed its intention to focus on access to remedy, and in particular State-based judicial remedies. The Working Group stated that it intended to focus on obstacles to non-judicial State-based remedies in a later report. The Working Group took good note of the steps achieved during the OHCHR-led Accountability and Remedy Project, and the content of the resulting report "Improving accountability and access to remedy for victims of business related human rights abuse" (A/HRC/32/19) and the addendum (A/HRC/32/19/Add.1). It resolved that its work on access to remedy would build on and seek to complement this existing output. The Working Group also took good note of the request in Human Rights Council resolution 32/10 for the High Commissioner for Human Rights to "identify and analyse lessons learned, best practices, challenges and possibilities to improve the effectiveness of State-based non-judicial mechanisms that are relevant for the respect by business enterprises for human rights, including in a cross-border context" and noted that this work would result in a report to be presented by OHCHR to the 38th session of the Human Rights Council.

11. The Working Group also discussed the study "on best practices and how to improve on the effectiveness of cross-border cooperation between States with respect to law enforcement on the issue of business and human rights" that it has been asked to prepare under Human Rights Council resolution 32/10. The Working Group noted that the request was for this study to be presented to the 35th session of the Human Rights Council.

IV. Plans for the fifth annual Forum on Business and Human Rights and a possible Regional Forum in 2017

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

13. The Working Group observed that the title of the annual Forum “Leadership and Leverage: Embedding human rights in the rules and relationships that drive the global economy” had been well received.

14. The Working Group informed stakeholders that a draft programme, flyer, and details of key speakers were made available on the Forum website during September 2016.

15. The Working Group noted that the Forum will examine:

(a) State leadership and leverage, particularly the need for Governments to step up their efforts to protect human rights (including by providing access to remedy) and lead by example in their own business-related operations;

(b) Business leadership and leverage, particularly the concepts of leadership and leverage across the company value chain and in relationships with various stakeholders, and also the role of business in providing access to remedy; and

(c) The leverage of financial institutions, investors and the insurance sector in driving business respect for human rights.

16. The Working Group was pleased that some 160 applications for parallel sessions had been submitted and observed that the range and quality of submissions had improved in comparison to previous years. The Working Group noted that it had been important to apply the criteria stated on the Forum website when selecting sessions in order to make sure that the Forum programme was balanced and reflective of the chosen focus areas. The programme include a mixture of formats, such as high-level plenary sessions, case study discussions and panel discussions, and seeks to provide an environment in which new tools and initiatives, salient issues and practical implementation challenges can be openly discussed.

17. The Working Group discussed the challenge of ensuring increased participation from the Global South, particularly from affected communities. It noted that budgetary constraints make it possible to provide travel expenses for only a small number of speakers. It reiterated its hope that States would encourage experts and policy-makers from capitals to attend, in addition to Geneva-based diplomats. It also noted that the Forum was attracting an increasing number of business representatives and encouraged States would promote the Forum to businesses and business associations. The Working Group remained keen to achieve balanced stakeholder participation in the Forum from States, business, civil society, and communities directly affected by business operations, as well as gender balance of speakers.

18. The Working Group also discussed possible themes and areas of focus for the annual Forum on Business and Human Rights in 2017 and noted that it wished the Forum to focus on the issue of access to remedy.

19. The Working Group reflected on the lessons learned from the Regional Forum on Business and Human Rights for Asia held in Doha, Qatar from 19 to 20 April 2016. The Working Group noted that holding a Regional Forum is an extra-budgetary activity that requires voluntary financial contributions in order to take place. It discussed the merits of holding such Regional Forums and reiterated that it saw the value in Regional Forums and that it would like to continue convening such forums, should funding become available. It placed importance on taking a regionally balanced approach and, noting that it had already held Regional Forums for the African, Asian and Latin America and the Caribbean regions.

V. Regional consultations

20. The Working Group discussed plans to hold a second meeting on business and human rights during January 2017 in Santiago, Chile. The meeting would be a follow-up to the meeting that it held in Santiago, Chile from 2 to 3 March 2016 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”, organised jointly with the OHCHR Regional Office for South America. The Working Group expressed its thanks for the interest in the topic and the support of the OHCHR Regional Office for South America.

VI. Meetings and briefings with stakeholders

21. The Working Group met with OHCHR staff and received an update on: the OHCHR-led work on access to remedy; the preparations for the second session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights to be held in Geneva from 24 to 28 October 2016; the preparations for the database of business enterprises in accordance with Human Rights Council resolution 31/36; and the Universal Periodic Review mechanism and how this mechanism can be used more effectively by Special Procedures mandate holders, for example in the context of country visits. The Working Group also held a meeting with a representative of the OHCHR travel unit to discuss matters relating to travel of Special Procedures mandate holders. It recorded its thanks to all the concerned OHCHR staff members for their input.

22. The Working Group met with Office representatives of the ILO and discussed points of collaboration and cooperation between the ILO and the Working Group. From the ILO side representatives from the Enterprises department, the Gender, Equality and Diversity Branch, the International Labour Standards department, and the Sectoral Policies department attended the meeting. The following items were discussed: the Working Group’s plans for its reports to the Human Rights Council and the General Assembly in 2017; plans for the fifth annual Forum on Business and Human Rights and the involvement of representatives from the ILO in a number of sessions; the Working Group’s country visits to the Republic of Korea from 23 May to 1 June 2016 and Mexico from 29 August to 7 September 2016; the Working Group’s plans for country visits during 2017; the review process of the MNE Declaration ; and the conclusions contained in the ILC Report “Decent Work in Global Supply Chains” .

23. The Working Group had a telephone meeting with representatives of the OECD in Paris, France to discuss areas of continued collaboration and mutual interest, including in relation to the annual Forum on Business and Human Rights, SOEs, OECD participation in regional forums and consultations, a third joint event on public policy to be held in Paris during June 2017, and the OECD’s project for ASEAN countries on responsible business conduct which includes the Guiding Principles on Business and Human Rights.

24. The Working Group held a meeting open to all States and intergovernmental organizations. The meeting provided an opportunity for the Working Group to present its work since the fourteenth session and share its plans for 2017, in particular its reports to the General Assembly and the Human Rights Council, and country visits. The Working Group also discussed the plans for the fifth annual Forum on Business and Human Rights.

25. The Working Group held a consultation with civil society organizations and met with a range of stakeholders. Participants could attend in person or by telephone. The meeting provided an opportunity for civil society organizations to talk about specific

regions and cases with the Working Group and it provided a chance for the Working Group to share information about its work plan, including its reports to the General Assembly and Human Rights Council in 2017.

26. The Working Group held a consultation by telephone with representatives of a number of business associations during which it shared the plans for the annual Forum and gathered input in relation to its work plan discussions and priorities for 2017.

VII. Chairperson and Vice-Chairperson

27. Pavel Sulyandziga served as Chairperson of the Working Group, and Michael K. Addo served as Vice-Chairperson. For the period from 1 January to 30 June 2017, Michael K. Addo will serve as Chairperson and Surya Deva will serve as Vice-Chairperson.
