

Panel V.1: Moving Forward in the Implementation of the UN Guiding Principles on Business and Human Rights

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Madam Chair, excellencies, distinguished delegates, ladies and gentlemen,

It is an honour for me to share my views about the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) in the context of the current treaty process and with a view to strengthening cooperation in relation to access to justice at the national and international levels. I would like to thank the Chairperson-Rapporteur for giving me this opportunity.

My remarks today, made in an individual capacity, will be informed by my experiences as an academic and about six months of exposure to the work of the UN Working Group on Business and Human Rights.

I think that the game of “hide and seek” in the field of business and human rights is over for both states and business enterprises, because business as usual may no longer work. As the UNGPs were endorsed unanimously by states and have been supported by business as well as by civil society, both states and corporations will be under pressure from several “push and pull” factors to deliver on what they have promised in terms of implementing the UNGPs.

I will talk about the way forward in implementing the UNGPs in two specific contexts: in the context of National Action Plans (NAPs), and in relation to the proposed international treaty.

The UNGPs will not implement themselves. A range of concrete actions will be required on the part of states and businesses to translate the UNGPs into reality. NAPs are one of the most important vehicles in this process. I will therefore strongly encourage more and more states to develop their NAPs to implement the UNGPs. In fact, the process of developing NAPs should also help in assessing what a future international treaty should contain and how to implement such a treaty at the domestic level.

As distinguished delegates may know, the Working Group on Business and Human Rights has produced a Guidance document on developing NAPs. A final version of this Guidance will be issued at the 5th Annual Forum on Business and Human Rights next month. In addition to looking at the steps and processes laid down in the Guidance, states should also consider reports issued by the Working Group on various aspects of the UNGPs. For example, in its June 2016 report to the Human Rights Council, the Working Group recommended that states as economic actors should lead by example in relation to the human rights responsibilities of state-owned enterprises. Similarly, our last week report to the UN General Assembly recommends the types of actions that states and business enterprises

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should take to prevent, mitigate and address negative human rights impacts of agri-business operations on indigenous peoples and other local communities.

May I suggest that states should not think of NAPs to implement the UNGPs as a stand-alone animal that they have not seen before. Almost all states have human rights provisions and certain planning-cum-action documents to implement these human rights. If necessary in the local context, a NAP to implement the UNGPs may be plugged into these existing processes, and the Working Group's Guidance offers states this flexibility.

Moreover, greater attention should be paid to "action" in NAPs, especially in relation to strengthening access to remedies. Peer learning dialogues should also help in improving the quality of NAPs during initial drafting or during subsequent updates.

Madam Chair, let me now talk about the complementary nature of the process of implementing the UNGPs and the process of negotiating an international binding instrument.

Despite public statements from various stakeholders about the complementary nature of these two processes, I notice a deep cleavage between the two. This cleavage should be bridged because there are reciprocal advantages. Please allow me to explain this reciprocity point. As I had noted yesterday, the proposed treaty should build on the UNGPs rather than trying to reinvent the wheel all over again. In fact, the treaty process should use the UNGPs as a "springboard": the UNGPs should be the *starting point* for the treaty, though they need not be the *finishing point*. As this aspect of reciprocity is more related to subtheme 2 of this panel, I will not go further into it.

Rather, I will focus on the other side of this reciprocity and provide four concrete examples of how an international treaty could strengthen the implementation of the UNGPs.

- ✓ First, the treaty should require states to enact laws and develop policies to institutionalise mandatory human rights due diligence on the part of all business enterprises domiciled within their territory and/or jurisdiction. Doing so will not only contribute to the implementation of Principles 1 to 3 of the UNGPs but also link Pillar 1 with Pillar 2.
- ✓ Second, the treaty should require states to (i) include explicitly human rights provisions in bilateral investment treaties, (ii) conduct a human rights impact assessment before signing investment agreements, and (iii) make protection of investors rights subject to compliance with national and international human rights norms. This will help in implementing Principle 9 of the UNGPs, which reminds states to "maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other states or business enterprises".
- ✓ Third, the treaty should pay special attention to vulnerable sections of society who tend to suffer more from business activities. I am referring here to groups such as women, children, indigenous peoples, people with disabilities, and migrant workers. Although the UNGPs capture all human rights, Principle 12 provides that the business responsibility to respect human rights "at a minimum" relates to the International Bill of the Rights and the ILO Declaration on Fundamental Principles and Rights at Work. As the commentary on Principle 12 explains, business enterprises may need to consider "additional standards"

depending on circumstances. The treaty should consider including other human rights instruments – such as the Convention on the Rights of the Child (CRC), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) – as part of the minimum responsibility of business.

- ✓ Fourth, the treaty should strengthen access to effective remedy for victims by removing well-known barriers in accessing judicial remedies. Principle 26 reminds states to consider “ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy”. The OHCHR’s Accountability and Remedy Project provides several important recommendations on how these barriers could be removed. By adopting some of these recommendations, the proposed treaty would strengthen implementation of Pillar 3 of the UNGPs.

Madam Chair, let me conclude by saying that the victims of corporate human rights abuses are increasingly getting impatient about the slow progress that we have made so far in subjecting the corporate quest of profit maximisation to human rights law. States must do urgently everything within their means to ensure that businesses comply with their human rights responsibilities and are held accountable for breach of such responsibilities. Doing so will require not only an effective implementation of the UNGPs but also develop binding regulations at both national and international levels.

Thank you very much for your attention.