
Advance Edited Version

Distr.: General
10 April 2012

Original: English

Human Rights Council

Twentieth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Chairperson/Rapporteur: Margaret Jungk

Summary

In its resolution 17/4, the Human Rights Council established the Working Group on the issue of human rights and transnational corporations and other business enterprises for a period of three years, and requested that the Working Group report annually to the Council and the General Assembly.

The Human Rights Council appointed the members of the Working Group at its eighteenth session and they formally took up their role on 1 November 2011. The Working Group held its first session from 16 to 20 January 2012.

In the present report, drafted in a short period following the first session, the Working Group outlines its preliminary views concerning the background and context of the mandate, highlights positive examples of existing initiatives to disseminate and implement the Guiding Principles on Business and Human Rights, and outlines the main proposals and recommendations made by stakeholders in submissions to the Working Group and during informal exchanges carried out at its first session. The Working Group then presents an outline of the preliminary strategy that will inform its work for the remainder of the mandate, including strategic considerations that it will take into account and specific work streams. The present report concludes with an outline of the Working Group's approach to engagement with stakeholders, as well as its methods of work.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1–5	3
II. Background	6–10	4
III. Global context	11–21	5
IV. Uptake	22–40	6
A. International standards and initiatives	24–28	7
B. Initiatives by regional intergovernmental organizations	29–30	7
C. Initiatives by national Governments	31	8
D. Initiatives by national human rights institutions	32	8
E. Uptake by business organizations and enterprises	33–38	9
F. Application by civil society	39	9
G. Initial considerations	40	10
V. Feedback from consultations with stakeholders	41–46	10
VI. Strategy	47–74	11
A. Strategic considerations	48–62	12
B. Work streams and focus criteria	63–74	15
VII. Engagement with stakeholders	75–83	18
A. Overall inclusive and consultative approach	75–77	18
B. Engagement with Member States	78–81	18
C. Engagement with other stakeholders	82–83	19
VIII. Working methods	84–90	19
A. Chairperson-Rapporteur	85	20
B. Country missions and other field work	86–87	20
C. Receiving information	88–89	20
D. Forum on Business and Human Rights	90	20
IX. Conclusion	91–95	21

I. Introduction

1. In its resolution 17/4, the Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. This landmark decision by the Council marked the first time an intergovernmental body of the United Nations had endorsed a normative document on the previously very divisive issue of business and human rights. The endorsement by the Council effectively established the Guiding Principles as the authoritative global standard for preventing and addressing adverse impacts on human rights arising from business-related activity.

2. In resolution 17/4, the Human Rights Council decided to establish a working group on the issue of human rights and transnational corporations and other business enterprises with a mandate to, *inter alia*:

- Promote the effective and comprehensive dissemination and implementation of the Guiding Principles
- Identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to assess and to make recommendations thereon and, in that context, to seek and receive information from all relevant sources
- Support capacity-building and, upon request, provide advice and recommendations regarding the development of domestic legislation and policies relating to human rights and business
- Explore options and make recommendations for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas
- Integrate a gender perspective throughout the work of the mandate and give special attention to persons living in vulnerable situations, in particular children
- Guide the work of the Forum on Business and Human Rights, open to relevant stakeholders, to discuss trends and challenges in implementing the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights

3. At its eighteenth session, the Human Rights Council appointed five independent experts, of balanced geographical representation, for a period of three years, as members of the Working Group: Michael Addo, Alexandra Guáqueta, Margaret Jungk, Puvan Selvanathan and Pavel Sulyandziga.

4. Directly after taking up its functions in November 2011, the Working Group made a public call to States and other stakeholders for input to help inform its planning, methods of work and focus areas. More than 75 submissions were received before the first session of the Working Group, held from 16 to 20 January 2012. During the first session, the Working Group also engaged in introductory exchanges with more than 140 stakeholders from 103 organizations and with delegations representing some 58 States Members of the United Nations. The Working Group is deeply grateful to all who have contributed to and participated in its work to date.

5. The present report was drafted over a short period following the January session. It contains the Working Group’s preliminary considerations concerning the background and

context of the mandate, as well as some strategic considerations that will inform its work for the remainder of its mandate.

II. Background

6. In 2005, following a request by the Commission on Human Rights,¹ the Secretary-General appointed Professor John Ruggie as his Special Representative on the issue of human rights and transnational corporations and other business enterprises, with a mandate to identify and clarify standards of responsibility and accountability for business enterprises with regard to human rights, and to elaborate on the role of States in this regard.

7. In 2008, drawing on the research and consultations conducted over the course of the first three years of his mandate, the Special Representative introduced the “Protect, Respect, Remedy” Framework to the Human Rights Council at its eighth session, as a foundation on which thinking and action could be developed.²

8. The Framework rests on the differentiated but complementary duties and responsibilities of States and companies on the issue of business and human rights. States have the primary duty to protect against human rights abuses by third parties, including business; businesses have the responsibility to respect human rights; and there is a need for greater access by victims to effective remedies, both judicial and non-judicial.

9. In its resolution 8/7, the Human Rights Council welcomed the Framework and requested the Special Representative to operationalize it. The resulting Guiding Principles provide concrete and practical recommendations for implementation of the Framework. The normative contribution of the Guiding Principles lies not in the creation of new international law obligations, but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current framework falls short and how it should be improved.³ They highlight the steps that States need to take in order to ensure business respect for human rights and to provide effective remedy to those whose rights have been adversely; they provide a blueprint for companies to know and show that they respect human rights; and they constitute a benchmark that stakeholders can use to better assess, engage in and promote business respect and accountability for human rights.

10. The Guiding Principles are already widely supported as the authoritative global standard on business and human rights by States, business⁴ and civil society.⁵ From this advantageous starting point, the next step is to ensure the effective and broad-scale implementation of the Guiding Principles by States and companies. This unassailable goal is the focus of the mandate of the Working Group.

¹ Commission on Human Rights resolution 2005/69.

² A/HRC/8/5.

³ A/HRC/17/31, para. 14.

⁴ See www.business-humanrights.org/media/documents/ioe-icc-biac-submission-to_the-un-hrc-may-2011.pdf.

⁵ See the commentaries on the Guiding Principles on Business and Human Rights at the website of the Business & Human Rights Resource Centre (www.business-humanrights.org/Documents/UNGuidingPrinciples/Commentaries).

III. Global context

11. The mandate of the Working Group is derived from and embedded in the constantly evolving debate on the global economic and human rights environment and the appropriate role of business in it. Without presuming to prioritize a single issue or represent a complete or rigorously analysed picture of the global context, the section below outlines some initial observations concerning broad current trends that have informed the considerations and deliberations of the Working Group to date.

12. Such global trends and issues as the expanding reach of international businesses, the growing demand for scarce natural resources and the ongoing global crises have focused unprecedented attention on the impact of businesses on the societies in which they operate.

13. The “governance gaps” created by globalization have become even more relevant in today’s environment of financial, economic, environmental and social crises. As the effects of these interacting global challenges continue to unfold, thousands of people around the world have taken to the streets to protest against sectors perceived to have contributed to these crises; the perceived failure of States to take adequate steps to protect the rights of vulnerable persons and ensure accountability, and the perceived excesses of globalization that have contributed to harmful business-related effects on the environment, equality, justice and human rights.

14. Continuing financial distress and economic downturn remain a major concern for policymakers aiming to improve global economic governance, fill regulatory gaps and design interventions to keep ailing economies afloat. In 2012, global economic recovery is expected to stall,⁶ and the International Labour Organization estimates that, with the recent slowdown in economic activity, only half the number of jobs required to recover pre-crisis employment rates will be created.⁷

15. While some segments of society have benefitted from current economic patterns and globalization, others undeniably have not. This poses a challenge for sustainable and inclusive economic development, and raises concerns that some individuals and communities are becoming increasingly marginalized and vulnerable to business-related impact on their human rights.

16. In the face of the interlocking and myriad challenges currently affecting the global economy, businesses, in conjunction with States, have an indispensable role to play, in shaping a common path towards a sustainable future. Businesses have a critical contribution to make to inclusive economic growth, job creation and the quest for new durable and innovative ways to realize all three pillars of sustainable development: economic, environmental and social.

17. In this context, scrutiny of how business enterprises are meeting their responsibility to respect human rights, and how States are protecting rights holders from business-related harm, is increasing.⁸ Civil society and other stakeholders are casting an ever wider and intense spotlight on instances of alleged company involvement in human rights infringements, adding weight to the push for greater accountability.

⁶ IMF, World Economic Outlook 2012, available from www.imf.org/external/pubs/ft/weo/2012/update/01/index.htm.

⁷ International Labour Organization, World of Work Report 2011: Making markets work for jobs, International Institute for Labour Studies, Geneva, 2011.

⁸ See www.business-humanrights.org.

18. Recent media coverage of the impact on human rights linked to global brands and the increasing attention paid by investors to environmental, social and governance risks further indicate that societies expect companies to respect human rights throughout their operations and business relationships.⁹

19. As companies domiciled in emerging economies play an ever greater role in the global marketplace – as seen for example in the increasing global reach of corporations headquartered in the “BRIC” countries (Brazil, the Russian Federation, India and China) – business and human rights concerns are increasingly raised not only in relation to “Western” companies, but also with regard to a much wider suite of companies in all regions and sectors of the economy.

20. Governance gaps lie at the core of the human rights and business challenge. This remains the case for all States and regions and for companies of all sizes, sectors and operational contexts. The Working Group is aware of a broad range of such gaps, concerns and challenges, including in such areas as governance, corruption, conflict zones and persons living in vulnerable situations, including children, indigenous peoples, migrant workers, minorities and persons with disabilities. A gender perspective adds further dimensions to these concerns.

21. Nonetheless, attempts to close the governance gaps with respect to business and human rights are gaining ground. The Guiding Principles on Business and Human Rights play a key role in many of these initiatives.

IV. Uptake

22. Less than a year after their unanimous endorsement by Human Rights Council, the Guiding Principles on Business and Human Rights have already been incorporated into a number of leading international standards and initiatives and have been used as the basis of important implementation and dissemination efforts by regional intergovernmental organizations, States, national human rights institutions, business organizations and enterprises, and civil society.

23. The initiatives surveyed represent the first positive steps on the journey to comprehensive dissemination and implementation of the Guiding Principles. The Working Group will work to identify and promote ways to build on the strength of these good efforts wherever possible and appropriate, towards the common goal of comprehensive and effective implementation. The Working Group has not yet had the opportunity to undertake a systematic mapping of the status of implementation and dissemination of the Guiding Principles; the current section therefore presents an overview based on information received to date by the Working Group. The examples covered are not exhaustive, and are intended to serve as an indication of the growing diversity of initiatives being undertaken. The Working Group welcomes additional information from all relevant sources regarding activities involving the dissemination or implementation of the Guiding Principles, including, in particular, information concerning good practices and lessons learned in this regard.

⁹ Schoemaker, Dan, “Ruggie’s legal legacy: could human rights become the biggest investor ESG risk?”, *Responsible Investor*, 8 March 2012.

A. International standards and initiatives

24. In 2010, the International Organization for Standardization released its social responsibility standard, ISO 26000, which includes a human rights chapter aligned with the corporate responsibility to respect human rights, as articulated in the Guiding Principles.¹⁰

25. The Guidelines for Multinational Enterprises of the Organization for Economic Development and Cooperation (OECD), as updated in 2011, now align fully with the corporate responsibility to respect human rights as set out in the Guiding Principles.¹¹ Recent statements by some National Contact Points, who are mandated to handle complaints on alleged breaches of the Guidelines, illustrate and reinforce the link between the OECD Guidelines and the Guiding Principles.¹²

26. The United Nations Global Compact has stated that the Guiding Principles provide the content of the first principle of the Global Compact, and thus form part of the commitment made by some 8,700 corporate participants in the Global Compact.¹³

27. The updated International Finance Corporation Sustainability Framework, which came into effect on 1 January 2012, now reflects important aspects of the corporate responsibility to respect human rights, as set out in the Guiding Principles.¹⁴

28. Important aspects of the corporate responsibility to respect human rights have also been incorporated into the final draft of voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security, which is pending final approval by the Committee on World Food Security at its special session in May 2012.¹⁵

B. Initiatives by regional intergovernmental organizations

29. The European Commission has issued a communication on corporate social responsibility, in which it expressed its expectation that all enterprises should meet human rights responsibility as defined in the Guiding Principles.¹⁶ In the wake of the communication, the Commission initiated projects to develop globally-applicable guidance based on the Guiding Principles for three industrial sectors (oil and gas, information and communications technology, and employment and recruitment) and for small and medium-

¹⁰ ISO 26000: 2010 Guidance on social responsibility, International Organization for Standardization.

¹¹ See www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html.

¹² See OECD National Contact Point Norway, "Report: Mining company does not act in accordance with the OECD Guidelines", available from www.regjeringen.no/en/sub/styrer-rad-utvalg/ncp_norway/news/report_intex.html?id=664912; and Netherlands National Contact Point for the OECD Guidelines, Final report of the National Contact Point for the OECD Guidelines in the Netherlands on the Specific Instance notified by CEDHA, INCASUR Foundation, SOMO and Oxfam Novib concerning Nidera Holding B.V., 3 February 2012, available from www.oesorichtlijnen.nl/wp-content/uploads/final_statement_nidera.pdf.

¹³ "The UN Guiding Principles on Business and Human Rights: Relationship to UN Global Compact Commitments", joint note by the United Nations Global Compact and OHCHR, July 2011. Available from www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf.

¹⁴ See www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/ifc+sustainability/sustainability+framework/.

¹⁵ See www.fao.org/news/story/en/item/128907/icode/.

¹⁶ See ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm, sect. 3.1.

sized enterprises.¹⁷ It has also stated its intention to publish periodic progress reports on the implementation of the Guiding Principles within the European Union, and invited its Member States to develop national plans for the implementation of the Guiding Principles by the end of 2012.¹⁸

30. In late 2011, the Association of Southeast Asian Nations (ASEAN) announced that the first thematic study by its new intergovernmental commission on human rights would focus on business and human rights and target an ASEAN guideline that would be fully compliant with the United Nations frameworks, in particular the Guiding Principles.¹⁹

C. Initiatives by national Governments

31. The Working Group received information from some Governments on initiatives to implement the Guiding Principles at the national level. For example, in June 2011, the Netherlands passed a motion in Parliament requesting the Government to provide a plan on how it intended to implement the Guiding Principles; in November 2011, Colombia and the United Kingdom of Great Britain and Northern Ireland issued a joint declaration expressing their commitment to implement the Guiding Principles;²⁰ and during the first half of 2012, the United Kingdom is holding multi-stakeholder consultations with business, civil society and academics on the process of preparing guidance to business enterprises on the application of the Guiding Principles.²¹

D. Initiatives by national human rights institutions

32. National human rights institutions made important contributions to the process of developing the Framework and Guiding Principles, as well as promoting the convergence between these and other international standards. Both the Guiding Principles and Human Rights Council resolution 17/4, in which the Council endorsed the Principles, envisage a key role for national human rights institutions in the context of their implementation. The Working Group on Business and Human Rights of the International Coordinating Committee of National Institutions has developed a draft plan of action that focuses on four activity areas: (a) to provide guidance and tools to national institutions on business and human rights; (b) to engage with stakeholders on human rights and the role of national institutions in implementing international and regional initiatives on business and human rights; (c) to produce and deliver awareness and outreach activities and products; and (d) to develop, pilot, implement and evaluate regional training and tools in collaboration with regional networks. National human rights institutions have also recently held regional strategic planning workshops on business and human rights, and identified priorities for

¹⁷ A member of the Working Group, Alexandra Guáqueta, is participating in her individual capacity in an international advisory group established by the European Commission to advise the guidance project.

¹⁸ European Commission, A renewed EU strategy 2011-14 for Corporate Social Responsibility, Brussels, 25 October 2011, COM(2011) 681.

¹⁹ Remarks by Rafendi Djamin, representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights, at the Asia Pacific Forum of National Human Rights Institutions Regional Conference on Business and Human Rights, 11-13 October 2011, Seoul.

²⁰ See www.fco.gov.uk/en/news/latest-news/?view=PressS&id=695253482.

²¹ See www.ohchr.org/Documents/Issues/TransCorporations/Submissions/States/UnitedKingdom.pdf.

regional groupings of national institutions, including on their role in the context of implementing the Guiding Principles.²²

E. Uptake by business organizations and enterprises

33. Several business associations and networks have announced initiatives to develop guidance on the implementation of the Guiding Principles.

34. The International Petroleum Industry Environmental Conservation Association, a global oil and gas industry association for environmental and social issues, launched a three-year project in June 2011 for collaborative learning on due diligence and grievance mechanisms leveraging on the collective experience of its members and external expertise. The initiative is aimed at building the capacity of Association members and contributing to the implementation of the Guiding Principles.²³

35. The Roundtable on Sustainable Palm Oil has commenced a study on human rights standards, including the Guiding Principles, to inform a review of the principles and criteria standard by which its members operate globally.²⁴

36. The Global Business Initiative on Human Rights explores good practices and challenges in implementing the corporate responsibility to respect human rights, and seeks to build awareness and capacity among businesses in diverse markets. It specifically addresses the challenges involved in integrating human rights considerations into business relationships, human rights policy and human rights due diligence.²⁵

37. Some local networks of the United Nations Global Compact have specific work streams on business and human rights at the national level, with an explicit focus on the Guiding Principles.

38. The implementation of the Guiding Principles is also on the agenda of institutional investors²⁶ and bar associations.²⁷ In addition, a number of individual business enterprises have taken steps to or are in the process of designing policies and internal guidance that take the Guiding Principles into account.²⁸

F. Application by civil society

39. Civil society organizations are actively working to promote enhanced accountability of States and business enterprises for the human rights impact of business activity, with numerous examples referencing the “Protect, Respect and Remedy” Framework and

²² Submission of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to the Working Group on the issue of transnational corporations and other business enterprises, December 2011; Network of African national human rights institutions, in Yaoundé, October 2011; Asia-Pacific Forum of national human rights institutions in Seoul, October 2011; Network of National Institutions for the Promotion and Protection of Human Rights of the American Continent, Antigua, Guatemala, November 2011.

²³ See www.ipieca.org/topic/social-responsibility/human-rights#ti2492.

²⁴ A member of the Working Group, Puvan Selvanathan, currently sits on the executive board of the Roundtable.

²⁵ See www.global-business-initiative.org/About.html.

²⁶ Standard Life Investments, Standard Life Investments report on business and human rights in the extractive industries, 15 December 2011.

²⁷ See www.abanow.org/2012/01/2012mm109/.

²⁸ See www.business-humanrights.org/Documents/UNGGuidingPrinciples/Implementation-Companies.

Guiding Principles.²⁹ For example, civil society organizations have used the Framework and the Guiding Principles in relation to the recent review processes of key international standards, including the OECD Guidelines and the Sustainability Framework of the International Finance Corporation. They have also been cited by civil society when commenting on domestic legislation proposals. Moreover, it was brought to the attention of the Working Group that there is an increasing number of examples of analyses and advocacy in relation to business activities in specific contexts and industries that are being informed by the Guiding Principles.³⁰ In the context of the United Nations human rights system, some organizations have also referenced the Guiding Principles and the Framework in submissions for the universal periodic review process, to assess implementation of the State's duty to protect human rights.³¹

G. Initial considerations

40. The developments described above that have been brought to the attention of the Working Group prompt two initial reflections, which will be further addressed in the section on strategic considerations below. First, while these initiatives enhance opportunities for the Working Group to be more effective and comprehensive in disseminating and implementing the Guiding Principles, a majority of State, business and civil society actors are unaware of the Guiding Principles, precluding even the possibility of implementation. Second, despite converging standards and initiatives, such as those above, there remains a significant risk of fragmentation in the interpretation and implementation of the Guiding Principles. Beyond awareness and commitment, actors and stakeholders in all regions require support to build capacity to effectively implement the Guiding Principles within their policies and operations.

V. Feedback from consultations with stakeholders

41. The proposals and recommendations provided to the Working Group in written submissions prior to and at the introductory exchange of the first session reflect the vast scope and complexity of the mandate of the Working Group mandate, and more generally of the business and human rights agenda. The key trends noted in the observations made by stakeholders are summarized below. It should be noted that the summary does not pretend to be exhaustive or to fully reflect the richness of perspectives put forward to the Working Group.

42. Inputs from States emphasized that the Working Group should be active in all regions and maintain a close dialogue with States. Feedback focused on the provisions in the mandate of the Working Group on disseminating and implementing the Guiding Principles at the national level, particularly capacity-building and the sharing of knowledge, and lessons learned and good practices, including at sectoral level. In terms of working methods, States recommended that the Working Group should develop a close relationship

²⁹ See civil society submissions to the Working Group and prior examples referenced by the Special Representative of the Secretary-General, available from www.ohchr.org/EN/Issues/Business/Pages/Submissions.aspx and www.business-humanrights.org/media/documents/applications-of-framework-jun-2011.pdf.

³⁰ See the page of the Business and Human Rights Resource Centre dedicated to the Guiding Principles at www.business-humanrights.org/Documents/UNGuidingPrinciples.

³¹ Institute for Human Rights and Business; see www.ihrb.org/publications/submissions/index.html.

with other special procedures mandate holders and conduct regular exchange with United Nations agencies and programmes and international institutions.

43. Some States suggested that international legal options in the field of business and human rights should be explored. Issues raised by States included human rights due diligence, engagement with small and medium-sized enterprises, business operations in conflict zones, and vulnerable groups such as indigenous peoples, women and children. Some States also proposed that the Working Group facilitate a common inventory or portal to compile the efforts made by States and business to implement the Guiding Principles. With regard to its role in the broader field of business and human rights, States suggested that the Working Group should be an authoritative focal point and facilitator for the development of practical guidance and the promotion of alignment and coordination between ongoing implementation efforts.

44. Submissions from civil society urged the Working Group to be informed by actual situations of alleged business-related human rights abuse, in addition to examples of good practices. Some organizations also stressed the need to give special priority to engaging with individuals and communities adversely affected by business activities, as well as human rights defenders. While civil society recommended a wide range of issues to be given priority by the Working Group, three key issues emerged: (a) recommendations for exploring the further development of international standards; (b) access to remedies, and in particular obstacles in access to justice for victims of human rights abuse involving business; and (c) the impact of business on indigenous peoples and other vulnerable groups, including women and children. Other key suggestions included exploring the applicability of the Guiding Principles to financial institutions, both public and private, and for the Working Group to focus on large-scale investment projects in various sectors.

45. Business enterprises and organizations recommended that the Working Group should engage directly with business in all regions and all industries in an open and inclusive manner, and that its thematic focus should be balanced in terms of focus on all three pillars of the “Protect, Respect and Remedy” Framework. Business submissions also flagged the need for companies to be given appropriate time and space to apply the Guiding Principles in ways that take into account different individual circumstances. One key concern raised by business was the issue of how governance challenges, such as high levels of corruption and the importance of the informal sector, have an impact on the business responsibility to respect human rights.

46. While the present summary does not necessarily reflect the thematic priorities of the Working Group, the Working Group is mindful of all the perspectives referred to above, as well as others presented in the consultations. They provide vital input to its activities, and reflect the knowledge and experiences of stakeholders that have already begun to implement the Guiding Principles. The Working Group will continue to engage with all the groups consulted to date, and welcomes further submissions.

VI. Strategy

47. At its first session, the Working Group analysed its mandate in the light of the challenges, opportunities and current trends and activities relevant to dissemination and implementation, and the inputs received from stakeholders described above. The Working Group identified overarching strategic considerations, possible work streams and focus criteria, which together form a preliminary outline of the strategy that the Working Group will bring to bear in its mandate. The Working Group will seek to implement this strategy to the fullest extent possible, subject to the availability of resources. To that end, the Working Group will pursue collaboration with relevant partners and stakeholders wherever

possible and appropriate, with a view to matching resources and capacity to the activities and work streams proposed. The strategy will be further developed by the Working Group in its future reports and will be subject to periodic review throughout the mandate.

A. Strategic considerations

48. Transforming the Guiding Principles from agreed-upon practice standards to everyday standard practice is an undertaking of global proportions, and the Working Group underestimates neither the scale nor complexity of the challenge. In order to ensure relevance and responsiveness to current conditions, the Working Group has informed its strategy with elements of the economic, political and historical context described in the sections above. Three additional, and more specific, considerations informed the Working Group's strategy:

(a) The Guiding Principles will provide a common reference point in a diverse and rapidly evolving field;

(b) The need for greater access by victims of business-related human rights abuse to effective remedies, which is urgent both in and of itself, as well as an important opportunity to drive implementation by setting the right incentives;

(c) In order to promote dissemination and implementation most effectively, there is a need to cultivate an environment conducive for the uptake of the Guiding Principles.

1. The Guiding Principles: a common reference point in a rapidly developing field

49. As discussed above, some States and companies have already begun to implement the Guiding Principles. Implementation, fostered by increasing external pressures and growing internal commitment, will likely gather pace as awareness of the Guiding Principles grows and as more resources, guidance, projects and services are created to facilitate their uptake. At the same time, researchers, institutions and civil society organizations will offer new and refined interpretations and understandings of the Guiding Principles, which will complement dissemination and implementation efforts. The Working Group will seek to promote convergence, consistency, coordination and clarity of such efforts wherever possible and appropriate. In so doing, the Working Group will take into account, among other things, the considerations described below.

50. **Promoting convergence:** The Guiding Principles are the point towards which existing and future human rights and business standards and related, tools, guidelines, resources, services and initiatives for companies and States should converge. The Guiding Principles should remain the authoritative basis of understanding of the respective responsibilities and duties of business enterprises and States, and how these should be operationalized in practice. This objective should be pursued without curtailing further enhancement of standards or extension of expectations beyond the benchmark provided by the Guiding Principles.

51. **Avoiding duplication:** It will be important to prevent the duplication of activities, initiatives or contributions of others, as well as to avoid repetition, fragmentation and digression among current and emerging initiatives. Wherever possible and appropriate, the Working Group will seek to foster a central core of effort involving all parties, to share lessons learned and good practices between initiatives, and to ensure that separate initiatives are faceted and complementary, in order to meet the specific implementation challenges and opportunities presented by particular industry sectors and operating contexts, among other factors.

52. **Maintaining integrity:** The integrity of the Guiding Principles should not be compromised by casual interpretations, conceptual detours or partial approaches. While the Working Group cannot feasibly influence or evaluate all of the current and emerging initiatives relating to the Guiding Principles, it will seek to articulate indicators for processes and outcomes by which all stakeholders may assess for themselves the effectiveness of particular existing and emerging tools, resources and services that may be helpful in supporting implementation by States and companies.

53. **Balanced development:** The success of the mandate presumes balanced promotion of implementation and dissemination on all three pillars of the Guiding Principles, and by all stakeholders. The Working Group will, when appropriate, engage to challenge and suggest ways to redress asymmetry in implementation as and when it arises.

54. **Clarity and simplicity:** In all of its activities, the Working Group will encourage clarity and simplicity. The importance of clear and simple concepts and their communication should not be underestimated. In a world of competing demands for the limited attention and resources of States and companies, the precision and brevity of dissemination tools will be a prerequisite for their success.

55. **Encouraging results:** Comprehensive and effective implementation of the Guiding Principles should eventually result in improvements in the protection against human rights abuse by business enterprises, a reduction in business-related human rights abuse, and improved access to effective remedies for victims of such harm where it occurs. Implementation should remain focused on addressing the most severe forms of human rights impact of business activities, as well as the impact that impinges on the rights of persons living in vulnerable situations.

2. Using the Guiding Principles to enhance accountability

56. Enhanced accountability of companies for involvement in human rights harm is clearly envisaged by the Guiding Principles. In particular, the Guiding Principles set out that providing for adequate accountability of companies for involvement in human rights harm, through judicial, administrative, legislative or other appropriate means, is an integral part of the State's duty to protect. Initial consultations held by, and submissions made to, the Working Group clearly highlighted the importance of this aspect of the State's duty to protect. The Working Group also recognizes the important role of enhanced accountability in promoting the uptake of the Guiding Principles, and thus ensuring comprehensive and effective implementation by companies. In this connection, the Working Group notes that it is specifically mandated to explore options and make recommendations at the national, regional and international levels for improving access to effective remedies. This could include, among other things, identifying opportunities to dismantle barriers to justice for victims of business-related human rights harm; identifying success factors in establishing effective judicial as well as non-judicial grievance mechanisms; discussing the consequences for States and businesses that fail to implement the Guiding Principles; and paying particular attention to rights-holders that may be particularly vulnerable to harm, or that may bear the brunt of adverse impact.

57. The Working Group recognizes that some groups and individuals face particularly significant obstacles when seeking remedies for business-related human rights grievances. Such groups may include indigenous peoples, children, women, migrant workers, older persons, persons with disabilities, refugees, ethnic, religious and other minorities. Among these, the challenging nexus between the role of the State, business activities and the situation of indigenous peoples was emphasized by a range of stakeholders.

58. In order to promote enhanced human rights accountability of business enterprises, as well as of States, the further uptake and application of the Guiding Principles by

international and regional bodies that have existing accountability mechanisms is necessary. The Working Group will seek to survey the landscape of existing accountability mechanisms in global and regional governance structures, as well as relevant private regulatory efforts, in order to identify gaps in coverage and opportunities to build upon and strengthen existing remedy channels.

3. Building an environment receptive to the Guiding Principles

59. Local contexts will not always be conducive to straightforward implementation or dissemination of the Guiding Principles. Many business enterprises operate in environments subject to little positive external pressure to respect human rights. Some companies may initially fail to see the relevance of the Guiding Principles to safeguarding and ensuring the sustainability of their business. To build a conducive environment for the uptake of the Guiding Principles, the Working Group appreciates that (a) stakeholders must be empowered to demand that States and business enterprises meet their respective duties and responsibilities; (b) actors committed to supporting implementation and dissemination efforts must be equipped with the appropriate tools, skills and resources; and (c) the “business case” for respecting human rights must be built for both States and business enterprises. With regard to all three aspects, promoting efforts to build the capacity of relevant actors is of key importance.

60. **Activate the demand for implementation of the Guiding Principles:** Investors, consumers, workers, trade unions, civil society and affected persons, including indigenous communities, demand in increasingly vocal and visible ways that States and business enterprises address the human rights impact of business activities. It is the basic expectation of society as a whole that companies should respect human rights throughout their operations and in their business relationships. These voices each add their weight to the demand for States and business to fulfil their duties and responsibilities as laid out in the Guiding Principles. As such, they play a crucial role in supporting uptake. The Working Group will therefore seek to promote dialogue between stakeholders, including by enabling such voices to be heard in its various efforts to aid in the dissemination and implementation of the Guiding Principles.

61. **Reach new audiences and actors:** For the Guiding Principles to achieve their true potential, they must be well understood and applied effectively by a wide audience of practitioners, in all regions. This will form part of a specific work stream for the Working Group (see paragraphs 63 – 74 below).

62. **Promoting the “business case” for States and business enterprises:** There is a growing body of testimony indicating that failure to address the human rights impact of business activities may in some cases lead to significant negative legal, financial, operational and reputational consequences for companies. At the same time, implementing the Guiding Principles can serve as an integral component of long-term value creation, corporate citizenship and business sustainability. With regard to implementation by States, ensuring enhanced protection against business-related human rights harm, and the promotion by States of business respect for human rights, may help to prevent significant social, economic and environmental costs while also contributing to more equitable, inclusive, broad-based and socially sustainable economic development outcomes. In addition to stressing these points, the Working Group will emphasize the legitimacy of the Guiding Principles, provided by their grounding in existing international human rights standards, institutional backing and multi-stakeholder support, their normative clarity and inherent utility, as well the increasing availability of tools and resources that may support their implementation by both States and companies.

B. Work streams and focus criteria

63. Led by the broad strategic considerations described above, and subject to available resources and capacity, the Working Group proposes to pursue three work streams through which it will deliver its mandate: global dissemination, promoting implementation, and embedding in global governance frameworks. Within these broad programmes of work, further focus criteria have been applied to shape the selection of particular priorities.

1. Global dissemination

64. The Working Group sees dissemination of the Guiding Principles not as an end in itself, but as a necessary means towards their comprehensive and effective implementation. Given the broad scope and limited time frame of the mandate, and in order to ensure that all relevant stakeholders are aware and understand the core content of the Guiding Principles, the Working Group will focus on disseminating the Guiding Principles to the actors where it considers that the contribution to implementation will be greatest. The Working Group will therefore prioritize its engagement to promote dissemination with actors that fall in the following categories:

(a) *New audiences*: Stakeholders who are not yet aware of the content or the implications of the Guiding Principles, who may include, for example, audiences outside OECD, domestic and extended supply-chain businesses, State-owned enterprises, small and medium-sized enterprises and networks of civil society, community-based and grass-roots organizations, among others;

(b) *Multipliers*: Networks and institutions that can disseminate the Guiding Principles to large groups of relevant actors; these include regional institutions, business associations, development agencies, and corporate social responsibility and sustainability platforms;

(c) *Catalysts*: Those able to assist in the prompt implementation of the Guiding Principles, including institutions and groups providing technical assistance and capacity-building programmes to business and Governments, as well as groups that can help inform and empower communities to take up human rights issues affected by business operations, and create demand for implementation. It is expected that engagement of this group will promote the empowerment of rights-holders, and particularly communities in vulnerable situations, including indigenous communities, to become aware of and exercise their rights in the face of adverse impact caused by business.

65. The Working Group envisages that, through this programme of global dissemination, the Guiding Principles will bring much needed clarity to the innumerable business-related human rights challenges around the world by providing a common language and approach shared by all stakeholders. The ultimate aim is to support and create demand for implementation.

2. Promoting implementation

66. Many elements of the mandate of the Working Group point towards the overarching objective of the effective and comprehensive implementation of the Guiding Principles by States and enterprises. In this context, the Working Group highlights in particular the fact that the Human Rights Council instructed it to integrate a gender perspective throughout the work of the mandate and to give special attention to persons living in vulnerable situations, in particular children. Bearing this in mind, the Working Group foresees a variety of pathways towards implementation spanning a range of legal, institutional and business settings. Although the Working Group cannot drive or oversee implementation efforts alone, it can, and will, promote such efforts wherever possible and appropriate. This will

require collaboration, coordination and cooperation with others committed to the objectives of the mandate. In practical terms, the Working Group will seek to promote implementation in four principal ways.

67. **Address the situation of groups vulnerable to impact of business activities, including indigenous peoples:** Many factors can influence the vulnerability of rights-holders to business-related human rights abuse. The Working Group will therefore accord broad interpretation to this aspect of its mandate in order to ensure appropriate attention to the wide range of rights-holders mentioned in the present report that are particularly vulnerable to the negative impacts of business activity. In particular, indigenous peoples in all regions are profoundly and disproportionately affected by business-related activities, such as resource extraction and infrastructure development. They frequently face discrimination in law and social practice and are marginalized in the development of policies, laws and regulations that have a bearing on business and human rights issues that affect them. Business-related human rights impact on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization must be specifically addressed by States and companies in their implementation efforts.

68. **Encourage implementation efforts:** The Working Group will encourage implementation efforts by directly engaging with relevant actors (States, business and civil society), where possible, on the application of the Guiding Principles, by contributing to or participating in the implementation initiatives of other organizations, and by selectively initiating specific projects designed to further drive implementation, for example by encouraging the development of national plans of action and capacity-building efforts that have a bearing on implementation.

69. **Share good practices:** Important lessons are already being learned by pioneering implementers. These should be communicated across sectors and regions, for testing and application in new contexts. To this end, the Working Group will seek to identify, exchange and promote good practices, including by supporting their broad dissemination; in so doing, it will apply the principle that the practices it promotes must reasonably be expected to give effect to a standard no lower than that set out in the Guiding Principles themselves. The Working Group will apply this principle even in respect of implementation undertaken in the kinds of undeniably challenging contexts that States and companies may face.

70. **Provide further clarification on the application of the Guiding Principles:** Although they are universally applicable, the Guiding Principles are not intended as a tool kit, simply to be taken off the shelf and plugged in; in other words, when it comes to the means for implementation, “one size does not fit all”.³² The implementation of the Guiding Principles will inevitably give rise to questions and some need for further clarification in specific areas and contexts of actual practice. Just as the former Special Representative provided guidance, for example, on how management of human rights risks could be integrated into State-investor contract negotiations (work that resulted in the development of 10 principles for integrating management of human rights risks into contract negotiations),³³ which now sets the stage for further clarification to support the practical application of this guidance in the development of responsible investment contracts, the need for further clarification in other areas remains. Questions such as the implications of the Guiding Principles for business enterprises providing services that may have an impact on the enjoyment of human rights have already been brought to the attention of the Working Group. A similar case can be seen in practices of export credit agencies and related institutions in implementing human rights due diligence measures. With regard to

³² A/HRC/17/31, para. 15.

³³ See A/HRC/17/31/Add.3.

the impact on specific groups, the implications for the State duty to protect, due diligence by business and provision of remedy with regard to the situation of indigenous peoples is yet another area for further clarification, including as it relates to the issue of consultation. While the Working Group cannot examine all the questions and dilemmas that may arise in the course of implementation of the Guiding Principles, it will identify and clarify the most salient issues wherever possible, and then encourage partners, including academic and practitioner networks, to develop and disseminate solutions appropriate to specific challenges, such as those arising with regard to particular industry sectors, geographies, stakeholder groups or business relationships.

71. Under the above four focus areas, the Working Group proposes to use “learning labs” to support States and business enterprises to address common implementation challenges. In the case of business, these challenges include the incorporation of human rights into risk management and due diligence processes, supply chains and grievance mechanisms. In the case of States, these include advancing policy coherence, identifying roles for national and subnational public agencies, and building capacity of public accountability bodies and judicial and non-judicial mechanisms. These learning labs will provide opportunities to cross-share lessons learned, and identify and understand winning approaches, in order to build on the successes of others.

3. Embedding in global governance frameworks

72. As its third major platform of work, the Working Group will seek to promote incorporation of the Framework and Guiding Principles into global governance frameworks. To this end, the Working Group will proactively seek to engage with institutions overseeing existing and emerging governance frameworks that are able to play a significant role in requiring, or otherwise encouraging, business enterprises and States to implement the Guiding Principles. The Working Group will encourage the embedding of the Guiding Principles into such frameworks, including regional and international agreements and institutions, industry associations, and responsibility, sustainability and investor ranking indices, among others.³⁴ Guided by these considerations, and taking into account available resources and capacity, the Working Group will prioritize its engagement relating to those governance frameworks that (a) have effective accountability mechanisms; (b) can demonstrate a track record of adherence by members/participants to their tenets; (c) apply to a large number of actors; and (d) provide effective grievance mechanisms for affected individuals.

73. Throughout its work, the Working Group will seek to promote an active role for United Nations bodies in achieving the goals of its mandate.³⁵ In this regard, the Working Group welcomes the mandate given to it by Human Rights Council to work in close cooperation and coordination and to develop regular dialogue with other relevant special procedures of the Human Rights Council, relevant United Nations and other international bodies, including the human rights treaty bodies. The importance of such coordination,

³⁴ As an example of the role of the Working Group in promoting alignment of other frameworks with the Guiding Principles, see its background note to Governments involved with negotiating the Rio +20 outcome documents, available from www.ohchr.org/Documents/HRBodies/SP/BNUNGuidingPrinciplesBusinessHR.pdf.

³⁵ In 17/4, the Human Rights Council also requested the Secretary-General to prepare a report on how the United Nations system as a whole, including programmes and funds and specialized agencies, could contribute to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles, addressing in particular how capacity-building of all relevant actors to this end could best be addressed within the United Nations system. The report will be presented to the Human Rights Council at its twenty-first session.

cooperation and dialogue has been reinforced by stakeholders during the initial consultations of the Working Group.

74. In embedding the Guiding Principles in global governance structures, the Working Group will seek to complement and build upon the strength of important early successes, including the alignment of important frameworks under the auspices of OECD, the United Nations Global Compact, the European Commission and the International Finance Corporation with the Guiding Principles.

VII. Engagement with stakeholders

A. Overall inclusive and consultative approach

75. The Working Group recognizes that the final measure of success of its mandate will be the extent to which the Guiding Principles are mainstreamed into “business-as-usual” for all stakeholders in business activities – whether they influence, lead or participate in, or are affected by the same. This places the principle of multi-stakeholder consultation and input at the core of the philosophy of the Working Group, with the aim of garnering the widest degree of support by stakeholders for both the process and the outcomes of the mandate.

76. The former Special Representative’s implementation of his mandate was characterized as being evidence-based (surveys, mappings of current practices and research); widely consultative and open to extensive multi-stakeholder participation (47 consultations in five continents and many submissions) and pragmatic (focused on finding practical solutions to concerns of both State and non-State actors). Such an approach gave the mandate ample legitimacy and enabled it to propose an actual way forward, embodied today by the unanimous endorsement by the Human Rights Council of the Guiding Principles and in their uptake by public and private actors.³⁶

77. The Working Group is firmly committed to these principles of work and inclusive engagement, not only because all stakeholders have recognized their value and effectiveness but because dialogue and participation are consistent with the essence of a rights-based approach.

B. Engagement with Member States

78. In the pursuit of its mandate, the Working Group intends to continue to engage in regular dialogue and cooperation with Member States.³⁷ Engagement will be based on the commitment to an inclusive and consultative approach, and also on the basis that States bear, under international law, the primary obligation to promote and protect human rights and fundamental freedoms.

79. As provided by the mandate of the Working Group, it will also seek to provide advice and recommendations on good practices and lessons learned in the implementation of the Guiding Principles, on the development of domestic legislation and policies relating

³⁶ Since the first session of the Working Group, in January 2012, its members have already started to engage with regional organizations, States, business enterprises, civil society organizations and United Nations bodies.

³⁷ Working Group members have participated in meetings held by individual States and consulted with regional organizations that have ongoing processes relating to the implementation of the Guiding Principles.

to business and human rights, and on enhancing access to effective remedies. Technical cooperation and advice will be conducted in a constructive manner and based on dialogue.

80. Given the nature of its mandate, and depending on the particular issue being addressed, the Working Group will seek to engage with Government authorities and public entities at different levels and across different functions. This will include governmental departments, agencies and other State-based institutions that shape business practices.

81. The Working Group welcomes the steps already initiated to explore how States and intergovernmental organizations can implement various aspects of the Guiding Principles through policy frameworks and guidance for business enterprises. In its efforts to identify good practices and lessons learned on aspects related to the State duty to protect and enhancing access to remedies, the Working Group will naturally seek to engage closely with these States and organizations, including by identifying challenges that may be addressed to promote further effective implementation. The Working Group also intends to engage with States in all regions in order to raise awareness of the Guiding Principles as widely as possible and to assist in the process of exchanging and promoting good practices.

C. Engagement with other stakeholders

82. The Working Group aims to identify opportunities for strategic collaboration with those organizations identified within the resolution establishing the mandate, including relevant special procedures of the Human Rights Council, United Nations bodies, specialized agencies, funds and programmes, other international bodies, Governments, transnational corporations and other business enterprises, national human rights institutions, representatives of indigenous peoples, civil society organizations, regional and subregional organizations.³⁸ Further to these, the Working Group seeks to establish both direct and indirect collaboration with business associations, academic institutions and think tanks, industry round tables, multi-stakeholder initiatives, trade union federations, thought leaders, human rights defenders addressing business activities and grass-roots organizations.

83. The specific nature of the collaboration with different partners will be shaped by the considerations outlined in the strategy section, including the ability of the collaboration to be a “multiplier” and exponentially reach a wider audience than would be possible through the effort of the Working Group acting alone, and extend stakeholder groups in terms of both the type of stakeholders (for example, actors from different regions of the world) and the breadth within each stakeholder group (for example, from transnational corporations to small and medium-sized enterprises within the business stakeholder group).

VIII. Working methods

84. Following the deliberations held at its first session, and on the basis of inputs and submissions received from States and other relevant stakeholders prior to and during the session itself, the Working Group issued a statement on the methods of work it intends to follow in the implementation of its mandate.

³⁸ For example, members of the Working Group have engaged with the United Nations Conference on Trade and Development in preparation for the 2012 World Investment Report.

A. Chairperson-Rapporteur

85. The Working Group decided to rotate the function of Chairperson-Rapporteur after every two sessions of the Working Group. Margaret Jungk was appointed as Chairperson-Rapporteur for the first and second sessions. The Working Group will hold its second session from 7 to 11 May 2012 in Geneva.

B. Country missions and other field work

86. In accordance with its mandate, the Working Group will carry out two official country missions every year following the invitations received from Member States. Country missions will be conducted in the spirit of promoting constructive dialogue with States and all relevant stakeholders at the national level, and will have the aim of identifying, exchanging and promoting good practices and lessons learned in the implementation of the Guiding Principles. The Working Group intends to approach States that have issued standing invitations to special procedures, and encourages other States, from all geographic regions, to issue invitations to the Working Group.

87. In addition to official country missions and other visits to Member States, the Working Group aims to carry out its mandate in a manner that includes significant additional relevant field work across all regions to inform its work and to ensure that any findings and recommendations respond to practical and operational realities on the ground.

C. Receiving information

88. In the context of promoting the effective dissemination and implementation of the Guiding Principles, the Working Group was mandated by the Human Rights Council, in its resolution 17/4, to seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises, national human rights institutions, civil society and rights-holders.

89. Information received from relevant stakeholders relating to specific human rights violations will be used as appropriate by the Working Group to inform its work and strategy, to identify barriers to the effective implementation of the Guiding Principles and gaps in the protection of human rights in the context of business activities, and to inform recommendations made to States, business and other actors on the implementation of the Guiding Principles. Given the broad scope of its mandate, the vast scale and complexity of the issue at hand, and resource constraints, the Working Group is not in a position to investigate individual cases of alleged business-related human rights abuse.

D. Forum on Business and Human Rights

90. The first annual multi-stakeholder Forum on Business and Human Rights will be open to relevant stakeholders, in accordance with Human Rights Council resolution 17/4, and be held in Geneva on 4 and 5 December 2012. The Working Group will decide on the thematic focus areas and modalities of the Forum at its second session, following further elaboration of its programme of substantive work and taking into consideration the proposals already received from stakeholders at its initial consultations.

IX. Conclusion

91. The present report outlines the strategy that the Working Group will bring to bear in pursuit of the mandate conferred upon it by the Human Rights Council. This strategy is informed by consultation inputs and submissions from States, business enterprises and associations, civil society organizations and concerned individuals that the Working Group has received to date.

92. The Working Group is acutely aware of the complexities and sensitivities that surround its mandate. It nevertheless remains seized of the imperative to take whatever appropriate steps are necessary in order to secure the greatest protection of and respect for human rights in the context of business activities.

93. The Working Group acknowledges that business is a manifestation of opportunity, through the transformation of factors of production – land, labour, finance and technology – into goods or services, which can contribute to economic development. Current incentive structures for business, however, too often lead to decisions that are detrimental to the enjoyment of human rights. By the same token, incentive structures are neither inevitable nor immutable. By meeting their differentiated but complementary responsibilities, as outlined in the Guiding Principles, States and business enterprises have the potential to ensure that economic growth is achieved through more inclusive, equitable business practices.

94. The Guiding Principles are a powerful enabler for better decision-making by States and enterprises alike. The approach of the Guiding Principles to respecting rights, taking due stock of risks to and impact on rights-holders, and ensuring that effective channels for recourse and remedy for victims are made available, offer a road map for doing business better by lowering risk, creating opportunity, avoiding conflict, improving external relations, safeguarding productivity and enhancing value.

95. To this end, the inherent utility and strong, growing authority of the Guiding Principles as the authoritative global reference point on human rights and business should be leveraged to maximum effect. The Working Group intends to do precisely that. The Guiding Principles present an unprecedented opportunity to focus the good efforts of States, businesses and civil society on the unified goal of universal business respect for human rights, for the benefit of rights-holders everywhere.
