**Global Trends in the Implementation**

**of the UN Guiding Principles on Business and Human Rights**

**Remarks for the First UN Annual Forum on Business and Human Rights**

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Ladies and Gentlemen, welcome to the very first UN Annual Forum on Business and Human Rights. We have designed this first two-day Forum – which has now become almost a week-long global public dialogue – to take stock of early practices and lessons across the entire spectrum of the Guiding Principles. We look forward to hearing from practitioners on the ground right up to international organizations, many of which are well placed to solve collective action problems by States and businesses and to scale up the implementation of the Guiding Principles.

It’s been four years since the formulation of the UN “Protect, Respect, Remedy” Framework, a year and a half since the unanimous endorsement of the Guiding Principles on Business and Human Rights by the Human Rights Council, a year since the Working Group started its mandate, and some months since the Human Rights Council passed resolution A/HRC/21/5 mandating a feasibility study to set up a global fund to support capacity-building on the Guiding Principles. We all know that bringing business and human rights to the forefront of policy-making has been a long journey, that we are only at the beginning of the next era and that *systematic* implementation across the globe is yet to take root.

So, where are we now and how can we know? How can we answer simple questions such as how many new businesses compared to last year have committed to the Guiding Principles this year, and how many new States are now proactively addressing potential gaps in business and human rights compared to five years ago? Not only that; what civil society, businesses and States involved in this 21st century governance experiment will ultimately want to know is whether the smart mix of policy approaches in the Guiding Principles is really working for them as a mechanism to effectively prevent and address negative impacts by business, to increase trust, to reduce potential conflict and ultimately to enable development.

This session has three purposes: one, to highlight the technical and political relevance of a repository of data – something the former UN Special Representative on Business and Human Rights highlighted in his first mandate – we need accessible information and greater transparency; two, to share with you some few general trends before we delve into the cases and details of implementation in the panels of the Forum; and three, to start collectively thinking what this all means for the way forward.

Apart from public sources, the submissions the Working Group has received, and our engagement and dissemination meetings, I will draw from two pilot surveys recently conducted by the Working Group. The first one is a questionnaire sent to States in late October 2012, complemented with selected interviews which are still ongoing. The Working Group is thankful to the 15 member States who replied and encourages other States to do so by the extended 30 January 2013 deadline. The second pilot survey was sent to corporations and was developed and disseminated in cooperation with the Global Business Initiative on Human Rights, the International Chamber of Commerce, the International Organisation of Employers and the Corporations and Human Rights Project at the University of Denver. I need to caution that these are pilot surveys. We will soon need to start a conversation about knowing and showing progress. Final survey reports will be prepared for the Working Group’s report to the Human Rights Council in June 2013.

Let me start with the first, obvious trend. The interest in and demand for business and human rights norms more generally, and the Guiding Principles specifically is clear and spans from all regions, all industries and all stakeholders.

* 117 individuals from 33 countries and all industry sectors responded to the corporate survey in the very short window of time we gave them, a few weeks only. Given that 32% of respondents were based in Africa, Asia, Latin America and the Middle East, that 28% had fewer than 5,000 employees and that 96% of them said they knew of the UN Guiding Principles today, it is fair to say that the interest is global. Also, whereas 50% of respondents said to have engaged with the Ruggie mandate in the past, 86% envisaged continued or ongoing engagement with the UN today.

* A recent business poll by Business for Social Responsibility and GlobeScan in October 2012 showed human rights, including worker’s rights, as the top priority for businesses when thinking about sustainability issues.
* This Forum is a good thermometer, too. There are more than 900 registered participants from more than 80 countries.
* We also have at the Forum, numerous global governance institutions, public and private, which set and translate general standards into more specific operational protocols for States and businesses. There are 15 specialized agencies from the wider UN system including the World Bank and the International Finance Corporation; 17 representatives from inter-governmental organizations including the Association of South East Nations, the European Union, the Organization for Economic Cooperation and Development and regional public finance institutions, like the Inter-American Development Bank and the European Investment Bank. The International Organization for Standardization, the Fair Labour Association, the Ethical Trading Initiative, the Global Reporting Initiative, the Voluntary Principles on Security and Human Rights, and many others are here as well.
* The requests received by the Working Group are also a key indicator. In the past six months only, that is, half of our mandate so far, we received about 120 requests to support efforts of awareness-raising and dissemination, multi-stakeholder engagement, implementation and training. 11% of these requests came from business, 21% from civil society, 18% from international organizations, 13% from States, and 14% were multi-stakeholder.

Does this mean there is the desired level, and quality, of convergence on the Guiding Principles? The Guiding Principles have certainly been performing one of its key expected roles, to serve as an authoritative focal point and avoid normative fragmentation. Dozens of initiatives, old and new, have been reviewing or writing their charters and protocols using the Guiding Principles. Inside the UN system, for example, UNCTAD (UN Conference on Trade and Development) formulated a new Investment Policy Framework for Sustainable Development that uses the Guiding Principles as a key reference. Translating that reference into more practical parameters seems to be part of the next step. Treaty bodies and other Special Procedures Mandate Holders are referencing the Guiding Principles in their comments, and now there is a good deal of attention on the post 2015 Development Agenda. The Working Group and the Office of the High Commissioner on Human Rights have identified key actions to make the Guiding Principles an integral part of this.

Also, institutions that early on incorporated the UN “Protect, Respect, Remedy” Framework and the Guiding Principles are now delving into more concrete and operational ways of integration into their protocols. For example, the Compliance Advisor Ombudsman for International Finance Corporations and the Multilateral Investment Guarantee Agency adjusted its grievance mechanism guidelines this year following the effectiveness criteria developed in the Guiding Principles; the Organization for Economic Cooperation and Development’s Export Credit Group issued Common Approaches recommending human rights due diligence for export credit agencies and is now carrying out a key mapping exercise to identify how and where the Guiding Principles can be embedded into financial institutions; and more European Union countries are now starting to develop the expected National Action Plans on the implementation of the Guiding Principles.

Still, businesses say, according to the survey, that there are “too many competing responsible business agendas and initiatives”. We need to identify what businesses mean by this, whether they are daunted by the proliferation of sectoral guidelines and implementation initiatives or whether they are finding it hard to connect the policy debates related to job creation, business inclusiveness and financial regulation with the business and human rights agenda.

In any case, their answer reiterates the desire for convergence – businesses know it reduces transaction costs and increases the level of predictability that investment needs today. In addition to the convergence among proliferating decentralized instruments, what is needed now is perhaps some degree of simplification and aggregation. This, of course, is difficult. It is the sort of thing that requires high-level interest and will from organizations, it requires State encouragement and appropriate signalling, and a good deal of coordination. Also, local and regional contexts are yet to explore further what implementing the Guiding Principles in their specific cultural and historical settings means, and since the Guiding Principles become alive on the ground there will be a force pulling the Guiding Principles down and atomizing them. Still, given the route that some States are taking with implementation (I mean, requiring human rights due diligence from companies) and the need that companies have to publicly demonstrate their progress, it seems that global standardized certification, assurance and reporting requirements and guidelines, perhaps gathered at least by broad industry-groups, that can then be inserted into State’s expectations of companies could be a way towards the simplification and harmonization that businesses need to implement the Guiding Principles while navigating through the current market constraints. This is something to explore during these two days.

What are the issue-areas and industry sectors of greatest interest and concern? Extractives are still top on the list. From the 81 law suit cases recorded in the Business and Human Rights Resource Center archive, 38% related to mining, oil and gas; the next industry sector behind them, private security, only accounted for 7% of the cases. The available information we have from National Contact Points compiled by the Organization for Economic Cooperation and Development shows a similar pattern: 35% of the complaints for which the implicated industry sector is known relate to mining activities. The next sector is manufacturing with 8%. Reports of cases sent to the Working Group by affected communities and civil society have also featured the extractive industry. Land use, the issue of migrant workers and identifying roles and responsibilities of States and businesses for Information and Communication Technologies are also frequently referred to.

What is driving the interest of States, businesses and civil society on the Guiding Principles? The repeated references to new social backlash trends against perceived greed and misconduct of businesses across the world has certainly been at the forefront in the case of some public officials and business sector representatives at workshops and conferences attended by the Working Group. Other more practical factors weigh too, according to the surveys that the Working Group conducted. States acknowledged that additional endorsements –proffered by regional organizations or national legislatures—provided a fundamental “push” toward further action. In the case of European States, the recent policy document on Corporate Social Responsibility issued in October 2011 by the European Commission, which put the Guiding Principles at the core of corporate social responsibility, has been an important motivating force for various governments to start formulating National Action Plans. On the business side, the Working Group survey says that CEO leadership, customer requirements, investor due diligence and NGOs campaigns are all equally driving the uptake of the Guiding Principles. This confirms we need several, mutually re-enforcing strategies to incentivize uptake and implementation of the Guiding Principles.

How has the interest in the Guiding Principles translated into implementation? How is it done and what are the main challenges? The implementation path for companies set out in the Guiding Principles is straightforward: it is about integrating human rights due diligence in management systems and in business partnerships, which is not the same to say that it is easy to carry out in practice. According to the Working Group survey, companies are aware that negative impacts could happen but are not always assessing and managing them; they have started doing due diligence in their supply chains but don’t systematically approach their business partners to seek alignment with the Guiding Principles; and many have not transformed their “hot lines” into grievance mechanisms following the effectiveness criteria set out in the Guiding Principles. Businesses face, over all, two types of challenges: more practical ones (such as accessing training materials, mastering new human rights impact assessment methodologies, and simply getting on with integration); and those related to actually managing issues and exercising leverage over business partners in environments where human rights are not part of local law or common practices – which is precisely one of the reasons why we have the Guiding Principles, to provide companies and stakeholders an engagement platform and a set of accepted standards to engage each other in circumstances where governance gaps exist. Also, even though the Guiding Principles provide clarity as to the differentiated roles between States and corporations with regards to human rights, companies find it hard to understand their exact practical responsibilities on the ground in situations where institutions are lacking or have weak capacity.

States have a wider range of policy fields to address, so discussing implementation by States will be in itself challenging. The sample of State respondents to the Working Group survey is so far low, so generalizations are impossible at this stage. But what do we know so far? States associate Corporate Social Responsibility with respect for human rights and have started some form of dissemination of the Guiding Principles, some have chosen multi-stakeholder consultations as a key methodology to formulate new policies or choose priority areas. One State from an emerging market economy reported to have taken these dialogues to the local level. The consultative method, it was mentioned, was a direct lesson learned from the process led by the former Special Representative, John Ruggie. Some States explicitly recognize that national implementation plans will only be legitimate, comprehensive and ultimately effective if they are developed in an inclusive manner.

Several states have formed Interagency Working Groups to drive the incorporation of the Guiding Principles into regulation, policies and programs, which should help Human Rights departments of Ministries of Foreign Affairs, where the Guiding Principles tend to reside now, to interact with Ministries of Trade, Industry, Finance, Natural Resource Extraction, Land and Agriculture, as well as the range of regulatory bodies that already require due diligence. States recognize that inter-agency work and coordination, which is ultimately key for concrete implementation of the Guiding Principles, is only beginning. Integration with Ministries and Departments in charge of industrial policies is overall lacking. Identifying the roles and responsibilities of various State agencies continues to be a challenge. Government representatives leading the process of implementing the Guiding Principles have found it useful in their conversations with other government agencies to “make the case” for human rights, referencing both positive incentives about the business wisdom of promoting human rights (gaining access to markets, creating a productive workplace, establishing good relations with local communities, etc.) as well as potential negative effects (avoiding reputational and legal damages over sustained periods of time, for instance.) A combination of arguments, both moral and economic, has proved effective to get others on board.

States understand that translating international standards into practice domestically is not a foregone conclusion, and that no one government knows how to “get it right” from the outset. For this reason, they have sometimes consulted with other States and “compared notes” (as one representative put it) directly via teleconferences or when they coincide at international meetings and events. This is fine, but efforts should be more systematic and be scaled up.

Due diligence reporting expectations or requirements has been addressed by some States. The United States Office of Foreign Asset Control, for example, issued an annual reporting requirement for American companies and persons organized under US law investing above 500,000 US dollars in Myanmar. Most States that answered the survey noted an effort to encourage businesses to report their human rights practices or demonstrate due diligence, though the responses are split in terms of whether such reports are voluntary or mandatory. In any case, there is no indication that States have in place robust mechanisms to either verify or follow up on the results of voluntary reporting. There is a separate conversation on reporting taking place following the leadership of the UN Global Compact, UN Conference on Trade and Development, the UN Environment Programme Finance Initiative and others on sustainability reporting requirements by Stock Exchanges. This could become another entry point for the Guiding Principles that States could support.

Now, there are many issues, strategic and practical, that I have not addressed in these 30 minutes. It is still early days and the Guiding Principles have given us a lot of material to work with in the coming years. Apart from concrete implementation lessons and examples, we should now start asking about regional trends, industry sector trends, the role of multi-stakeholder initiatives in enabling implementation, State implementation trends, access to remedy patterns, national level implementation trends and general corporate uptake. These will further guide the way forward.

Thank you.