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## Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the seventh Forum on Business and Human Rights

### *Summary*

The present report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the seventh Forum on Business and Human Rights, held from 26 to 28 November 2018, provides an overview of key observations and messages emerging from the event. The title of the 2018 Forum was “Business respect for human rights – building on what works”. The main focus was the second pillar of the Guiding Principles on Business and Human Rights – the corporate responsibility to respect human rights – and, in particular, the requirement that companies exercise human rights due diligence to prevent adverse impacts on people. The programme included more than 70 different sessions and gathered more than 2,700 participants from a range of backgrounds, including States, business, civil society, international organizations and affected groups and individuals.

Owing to the large number of sessions held during the Forum, the report does not provide a detailed summary, but rather a broad overview and key messages emerging from the discussions that took place over the three days. It should be read together with the programme, session concept notes, statements and session web recordings of the Forum, which are available on the Forum website ([www.ohchr.org/EN/Issues/Business/Forum/Pages/2018ForumBHR.aspx](http://www.ohchr.org/EN/Issues/Business/Forum/Pages/2018ForumBHR.aspx)).



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## I. Introduction

1. Since its first session in 2012, the Forum on Business and Human Rights has become the world's biggest event on business and human rights. It was established by the Human Rights Council in its resolution 17/4, in which the Council also endorsed the Guiding Principles on Business and Human Rights: implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex). The mandate of the Forum is to discuss trends and challenges in the implementation of the Guiding Principles; to promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups; and to identify good practices.

2. The Forum is organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and guided and chaired by the Working Group on the issue of human rights and transnational corporations and other business enterprises. The present report was prepared by the Working Group in accordance with Human Rights Council resolution 35/7, in which the Council invited the Working Group to submit a report on the proceedings and thematic recommendations of the Forum to the Council for its consideration. In the report, the Working Group provides an overview of key observations and messages emerging from the Forum.

3. The programme for the 2018 Forum included three plenary sessions and more than 70 parallel sessions, the latter organized by the Working Group, OHCHR and external organizations on the basis of extensive consultations and some 360 submitted session proposals. The programme also included a series of "snapshot" presentations on current business and human rights issues.

4. Under the theme "Business respect for human rights – building on what works", a special emphasis was put on the second pillar of the Guiding Principles: the corporate responsibility to respect human rights, and in particular the requirement that companies exercise human rights due diligence to prevent adverse impacts on people. The report on the state of play of corporate human rights due diligence in practice prepared by the Working Group for the seventy-third session General Assembly (A/73/163) provided the key reference for the Forum.<sup>1</sup> Participants actively participated in multi-stakeholder discussions, addressing policy initiatives and case studies both in panel discussions and in sessions held in the spirit of a round-table conversation.

5. The programme included sessions dedicated to trends, challenges and emerging practices in each of the United Nations regions as well as in specific sectors. It also included a number of thematic sessions dedicated to specific issues, trends and challenges in implementing all three pillars of the Guiding Principles, such as the implications of "disruptive" technologies, applying a "gender lens" to the Guiding Principles, climate justice and transition to a green economy, corporate engagement on the Sustainable Development Goals and business in conflict-affected areas.

6. The Forum was attended by more than 2,700 participants from more than 130 States and a wide range of backgrounds (see table below).

<i>Category of participating stakeholders</i>	<i>Total (%)</i>
Academic	11.6

<sup>1</sup> The report is accompanied by two companion papers that elaborate on aspects of human rights due diligence and lessons from practice on how to get started and good practice elements. Companion paper II identifies good practice elements in relation to a number of aspects of human rights due diligence, including stakeholder engagement, transparency and meaningful reporting on human rights, integrating human rights in supply chain management beyond tier one, exercising leverage, addressing systemic issues and corporate engagement on the Sustainable Development Goals. See [www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDDueDiligence.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDDueDiligence.aspx).

<i>Category of participating stakeholders</i>	<i>Total (%)</i>
Private sector (business enterprises, business/industry associations, consultancies, law firms, investors)	29.6
Civil society organizations, affected stakeholders, trade unions and indigenous peoples' groups	34.4
Multi-stakeholder initiatives	3.0
National human rights institutions	2.5
States	8.2
United Nations/intergovernmental organizations	5.5
Other	5.2

7. Participation has increased significantly since the first Forum, held in 2012, when some 1,000 people registered. Private sector representation has also witnessed steady growth, reaching over 29 per cent of the total. Fifty-seven per cent of registered participants were women, and 55 per cent of participants with predefined speaking roles were women.

## **II. Key messages from the plenary sessions**

### **A. Opening plenary<sup>2</sup>**

8. The Forum was opened by the United Nations High Commissioner for Human Rights and the Chair of the Working Group. In their opening remarks, they welcomed the increasing interest in the Forum, which indicated that the movement to ensure that businesses upheld human rights was gaining momentum. At the same time, they stressed that several gaps and challenges remained with regard to government action and business respect for human rights in practice.

9. The High Commissioner, highlighting the seventieth anniversary of the Universal Declaration of Human Rights and the need for all actors, including business, to stand up for human rights, recalled that the Declaration calls “every individual and organ of society” to strive to promote respect for human rights. She expressed concern about the number of attacks on women and men who were speaking up and taking action to defend their communities against human rights abuses in the context of business operations, and that this situation needed to be addressed by both States and business enterprises and organizations. She noted that upholding human rights was in the interest of all actors: “Societies become stronger; people benefit from greater opportunities, dignity and freedom; and businesses do better, because upholding human rights is good for their bottom line, as well as their reputation. Evidence shows that doing the right thing is also the smart thing to do.”

10. The Chair of the Working Group stated: “Everyone attending the Forum is on the same side of history. Coming from different world regions, representing different sectors and interests, we may have different perspectives on how to do things. But we are all here because of the same imperative: the need to ensure that all the children, women and men affected by business activity – whether in the workplace or in their community – are treated with respect for their dignity and human rights. We are all standing up for human rights.”

11. Both the High Commissioner and the Chair of the Working Group noted that the 2030 Agenda for Sustainable Development envisages an important role for the business

<sup>2</sup> A video of the opening plenary meeting is available at <http://webtv.un.org/search/opening-plenary-forum-on-business-and-human-rights-2018/5971612297001/?term=&lan=english&cat=Forum%20on%20Business%20and%20Human%20Rights&page=2>.

sector in contributing towards achieving the Sustainable Development Goals, and stressed that respect for human rights must be a foundation for corporate engagement on the Goals.

12. The Chair shared the Working Group's findings on the state of play of corporate human rights due diligence from its latest report to the General Assembly. He noted that, although human rights due diligence had increasingly been reflected in policy frameworks at the global, regional, national and corporate levels since the introduction of the Guiding Principles in 2011, most companies did not demonstrate practices that met the requirements set by the Guiding Principles and lack of government action remained a major gap. Despite slow progress overall, the good news was that due diligence in practice could be done, as demonstrated by practices emerging among "pioneers". The Chair noted that prevention of negative impacts on people was at the core of due diligence, and also of the Working Group's mandate.

13. The Chair reiterated that respect for human rights was possible and a major contribution towards realizing sustainable development. The challenge ahead was to speed up and scale up efforts and build on the emerging good practices and to address remaining gaps and challenges, bearing in mind that doing the right thing was also the smart thing. The Chair concluded that the need for faster progress was urgent; that was why the Forum was so important. He noted that listening to practitioners and those that were confronting the challenges was the first ingredient in creating change.

14. Kailash Satyarthi, 2014 Nobel Peace Prize laureate, gave the keynote address, in which he called for joint action to eradicate child labour and slavery.

15. The keynote speech was followed by two panel conversations, one with a group of civil society leaders and the other with senior executives from business and the investment community.

16. The former involved prominent human rights advocates, who shared personal and inspiring stories of their struggles to call for business respect for human rights in practice. They addressed issues such as child labour, trafficking, sexual harassment, slavery and the continuous attacks on human rights defenders. Among the key messages was that businesses should not see fighting slavery, trafficking and child labour as a charitable action, but should put fighting them at the core of businesses in order to find sustainable solutions. All speakers agreed on the need to promote dialogue among different stakeholders, working collaboratively and allowing a safe space for human rights defenders to speak and to act upon business-related human rights abuses.

17. Speakers highlighted the four pillars of the 2030 Agenda (how to protect people, the planet, prosperity and peace) and stressed that in a globalized world, solutions to safeguard all the pillars had to be found through mutual coordination and cooperation and by building new innovative partnerships. The Guiding Principles provide the framework for promoting corporate respect for human rights and accountability, without which progress along all four dimensions would be meaningless. However, it was noted that implementation of the Guiding Principles at the local level needed to be strengthened significantly. The central role of the Government in the advancement of human rights was emphasized, not least in relation to addressing the alarming and growing threats to human rights defenders worldwide. It was stressed that Governments and business actors must work together with civil society organizations and human rights defenders as equals to build a sustainable and just future for all.

18. The second discussion featured, for the first time at the Forum, a panel of senior business leaders who shared their perspectives on embedding respect for human rights in company practice and the importance of human rights due diligence. The panellists discussed ways in which their companies had embedded human rights in their operations, including in the value chain, as well as challenges, success factors and lessons learned in that process.

19. The panellists discussed measures such as adapting their companies' human rights policy to the Guiding Principles; codes of ethics, including for the supply chain; reporting and whistle-blowing systems for violations; and partnering with stakeholders, customers, non-governmental organizations (NGOs) and Governments. Some of the challenges

identified in this respect were balancing short-term and long-term goals, working conditions at the workplace, human rights and local communities, educating people and extending human rights due diligence to all global supply chains. In terms of solutions, it was noted that strong assessment systems and constant follow-up were needed. Awareness must be raised regarding the importance of human rights and the Sustainable Development Goals in connection with business and how this could bring economic growth and sustainable development. It was also critical to educate small and medium-sized enterprises about the importance of human rights. All those elements were key, but there was a need for a change of mindset. In order to achieve that change, learning from experience – both successes and failures – and sharing lessons learned were essential, as was the involvement of all stakeholders, including youth, in a due diligence process. In that process, it was vital to listen to the concerns of stakeholders, particularly affected communities. It was noted that prevention was at the core of human rights due diligence; in that regard, involving the most vulnerable and invisible was critical, and assessments by third parties and setting up community grievance mechanisms were useful tools.

20. A representative from the stock exchange in Chile participated in the panel, touching on how capital markets in emerging markets could be leveraged to speed up and scale up good business practices beyond the small group of “pioneers”. The panel addressed how stock exchanges could help induce more companies to place respect for human rights at the core of their operations. Research had shown that responsible business resulted in better returns for shareholders and, as a result, sustainable markets were more efficient and attracted more long-term-oriented investors. Although investors were increasingly looking for responsible business, companies, for example in Latin America, still saw sustainability as separate from business. In that regard, stock exchanges played a crucial role given their strategic position as the point where investors met markets.

21. All the plenary speakers underlined the need for Governments to exercise stronger leadership to drive responsible business practice in line with the Guiding Principles by setting clear expectations, leading by example, reinforcing market incentives and enforcing existing legislation.

## **B. Plenary on global governance and policy coherence<sup>3</sup>**

22. The plenary on global governance and policy coherence gathered for the first time senior leaders from the United Nations (the High Commissioner for Human Rights, the Assistant Administrator of the United Nations Development Programme (UNDP), the Director-General of the International Labour Organization (ILO) and the Chief Executive of the United Nations Global Compact) and other international organizations (the Deputy Secretary-General of the Organization for Economic Cooperation and Development (OECD)) working to promote responsible business conduct and sustainability. This panel aimed at signalling the need for alignment of international standards and action to promote corporate respect for human rights as well as reinforcing the message that business respect for human rights must be at the heart of corporate contributions to the 2030 Agenda for Sustainable Development. The panel also focused on the importance of corporate human rights due diligence to enable business enterprises to meet their responsibility to respect human rights.

23. It was noted that the lack of policy coherence at all levels was the main challenge in addressing global governance gaps. However, since the Guiding Principles were unanimously endorsed by the Human Rights Council at its seventeenth session, there has been significant convergence around the Guiding Principles and the concept of corporate human rights due diligence. Participants welcomed encouraging indications of steps in the right direction, such as the 20 national action plans issued to date and the growing, albeit small, number of big enterprises committed to implementing human rights due diligence.

<sup>3</sup> Videos of the plenary meetings are available at <http://webtv.un.org/meetings-events/human-rights-council/forum-on-business-and-human-rights/watch/plenary-ii-building-coherence-forum-on-business-and-human-rights-2018/5972065478001>.

However, it was recognized by all speakers that more alignment between business practices and the Guiding Principles was needed to build coherence and reach scale.

24. Speakers furthermore emphasized the critical role of business in the achievement of the Sustainable Development Goals and that respect for human rights must be the foundation for corporate engagement. The close collaboration among different institutions was noted, in particular with regard to human rights due diligence. It was noted that the OECD Due Diligence Guidance for Responsible Business Conduct issued in 2018 represented a further important step towards a common understanding of corporate human rights due diligence that was fully aligned with the Guiding Principles. All participants stressed the importance of partnerships with all stakeholders in order to scale up the action to address business-related human rights protection gaps and to make respect for human rights a bedrock for corporate engagement in support of the 2030 Agenda.

### C. Closing plenary<sup>4</sup>

25. The Forum concluded with statements by key stakeholder constituencies. Participants emphasized a common message: Governments in general are not meeting their duty to protect; there is insufficient political will, a lack of policy coherence, and they are not leading by example. They acknowledged the increasing participation of the private sector in the 2018 Forum, where the private sector represented almost 30 per cent of participants, but stressed the need to attract those businesses that were not embracing human rights. All speakers stressed the need for stakeholders to work together in partnership to drive State and business action and accountability.

26. Key messages from stakeholders included the call by the indigenous peoples' caucus for all actors to respect indigenous peoples' rights and to consult with indigenous communities in connection with business projects. States needed to comply with their obligations towards indigenous peoples, including through national action plans, and to take adequate measures against companies that violated indigenous people's rights. The caucus representative furthermore noted the essential importance of the third pillar of the Guiding Principles: the need for rights and obligations to be matched to appropriate and effective remedies when breached and the need to protect human rights defenders in law and in practice. A call was made to make more spaces available for the participation of indigenous groups within the United Nations.

27. A representative of the Brazilian NGO *Justiça nos Trilhos*, which was the recipient of the first Human Rights and Business Foundation Award, presented at the 2018 Forum, emphasized the need to protect human rights defenders and affected communities and their right to speak out against harm caused by business activities.

28. The representative of the International Trade Union Confederation stressed the need to scale up ambition. Governments and business should address issues such as respect for freedom of association and collective bargaining and the fight against modern slavery, forced labour and trafficking. Governments should pass mandatory due diligence legislation in order to create a level playing field for all actors. The gender lens was considered critical.

29. From the perspective of international employers, it was stressed that it was important to focus on and find solutions at the local level in order to widen the implementation of the Guiding Principles. While the need to explore better ways to engage with bigger companies was noted, it was emphasized that engagement with small and medium-sized enterprises needed to be tailor-made to a much larger extent.

30. The Chair, on behalf of the Working Group, provided reflections on key takeaways, which are summarized in section VI below.

<sup>4</sup> A video of the closing plenary available at <http://webtv.un.org/search/plenary-iii-forum-on-business-and-human-rights-2018/5972698700001/?term=&lan=english&cat=Forum%20on%20Business%20and%20Human%20Rights&page=2>.

### III. State action

#### A. Regulatory and policy developments

31. The members of the Working Group and other stakeholders acknowledged that legal developments in some jurisdictions had the potential to create positive change, but that so far too few Governments were developing similar measures. More Governments were developing national action plans to implement the Guiding Principles, which was generally seen as a welcome development, although the effectiveness of most plans was being challenged.<sup>5</sup> Recent regulatory and policy developments in States that were highlighted at the Forum included:<sup>6</sup>

(a) Laws with broad human rights due diligence provisions for companies of a certain size, with a cascade effect that affects subsidiaries as well (law on the duty of vigilance, France);

(b) Laws geared towards improving transparency with regard to how companies address specific human rights risks, e.g., legislation aimed at preventing goods and services produced with child labour from being delivered to consumers (Child Labour Due Diligence Law, the Netherlands; Modern Slavery Act, Australia; revision of the Modern Slavery Act, United Kingdom of Great Britain and Northern Ireland);

(c) Ongoing efforts to publish national action plans on business and human rights (recently published plans in Slovenia and Luxembourg; ongoing consultation processes in Greece, Honduras and India; revision of already published plans in Italy);

(d) Introduction of a certification mechanism to ensure that the fishing industry is free from human rights abuses (Indonesia);

(e) Warnings of the introduction of mandatory human rights due diligence if companies fail to take necessary action voluntarily, with monitoring process set up (Germany).

32. While many discussions focused on human rights due diligence legislation, such as those mentioned in the previous paragraph, an overriding concern was expressed that such enactments could turn into “tick box” responses by business as opposed to meaningful due diligence processes. Concern was also expressed that action by individual Governments could result in a myriad of potentially different requirements. Addressing such concerns, there were several calls for efforts to align closely with the Guiding Principles and the OECD Due Diligence Guidance and for Governments to work together to ensure harmonization.

33. Participants noted that the call for harmonization highlighted the need for a treaty on business and human rights. However, views continued to differ on that issue in terms of the most viable road ahead. Participants at one session considered the “zero draft” prepared by the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, established by Human Rights Council resolution 26/9. Its stated aims are: (a) the promotion and protection of human rights in the context of business activities of a transnational character; (b) effective access to justice and remedy for those affected; and (c) the advancement of international cooperation with a view

<sup>5</sup> Updates on national action plans were provided by representatives of the Governments of Belgium, Brazil, Canada, Chile, Colombia, Finland, France, Georgia, Germany, Greece, India, Indonesia, Italy, Japan, Kenya, Liberia, Luxembourg, the Netherlands, Norway, Slovenia, Sweden, Switzerland, Thailand and the United Kingdom of Great Britain and Northern Ireland, as well as the representative of the European Union. A video of the full session is available at <http://webtv.un.org/search/part-i-panel-on-progress-on-the-un-guiding-principles-forum-on-business-and-human-rights-2018/5971665695001/?term=&lan=english&cat=Forum%20on%20Business%20and%20Human%20Rights&page=2> and <http://webtv.un.org/search/part-ii-panel-on-progress-on-the-un-guiding-principles-forum-on-business-and-human-rights-2018/5971981765001/?term=&lan=english&cat=Forum%20on%20Business%20and%20Human%20Rights&page=2>.

<sup>6</sup> See [www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx).



to fulfilling States' obligations under international human rights law. Participants at the Forum session dedicated to updates on the treaty process highlighted that much work remained to be done to clarify terms used in the draft, and on its scope and effect. Stakeholders were invited to submit their comments on the zero draft by the end of February 2019, with a view to a revised draft being circulated ahead of the next session of the Open-ended intergovernmental working group, to be held in October 2019.

## **B. "Leading by example"**

34. The Forum programme included various sessions on the role of States as economic actors, in line with the report that the Working Group presented to the Human Rights Council in 2016, in which the Working Group concluded that "States, as primary duty bearers under international human rights law, should lead by example" (A/HRC/32/45, para. 94).

35. The members of the Working Group noted, throughout the different sessions focused on the role of States as economic actors, that the private sector had put into practice more innovative practices than Governments, despite the wide range of tools that the latter had at their disposal.

36. The crucial impact of public procurement on the global gross domestic product (estimated at 15 to 20 per cent) was mentioned as a lever to promote positive change, including in supply chain practice. There was a growing trend towards including human rights in public procurement provisions in national action plans. However, there was limited inclusion of the Guiding Principles in Governments' procurement policies and programmes, with lack of capacity and awareness among the public buying function at large cited as key challenges. The following positive examples were among those highlighted:

(a) The Netherlands, Germany, Finland and Chile have included public procurement provisions in their national action plans;

(b) In the United Kingdom, the City of London has worked to embed human rights within public procurement through local partnerships;

(c) In Norway, work undertaken by Ethical Trading Initiative Norway assists procurers in the development of ethical procurement criteria for supply chains, tools and resources and provides guidance in procurement processes. Furthermore, following practice in Sweden, Norway is aiming to capture synergies at the municipal level by collaborating on risk assessments and follow-up;

(d) In Japan, although no comprehensive policy to promote sustainable public procurement exists to date, specific laws and measures such as the act on promotion of procurement for persons with disability (2013), the act on promotion of women's participation and advancement in the workplace (2016) and the law concerning the promotion of procurement of eco-friendly goods and services by the State and other entities (2000) have been put in place;

(e) In Finland, social aspects in public procurement are taken into account when assessing tender processes, including creating new requirements for procurement with regulation in terms of social responsibility;

(f) In Denmark, in line with the OECD Guidelines for Multinational Enterprises and the Guiding Principles, due diligence is a mandatory contract requirement in central government procurement contracts, complemented by pilot programmes on how to use due diligence criteria in the selection process. Promotion of due diligence is stimulated as part of procurement processes at the local level;

(g) In Australia, the newly adopted Modern Slavery Act requires the Government to produce a "modern slavery statement" with regard to public procurement.

37. Participants at one session addressed the role of States in using government trade promotion and development finance as levers for human rights due diligence. It was noted

that capacity-building, policy coherence and a strengthening of existing grievance mechanisms were essential measures for moving towards human rights-compliant development projects. Noteworthy examples included efforts by the Government of Finland to strengthen coherence across all five of its public finance instruments with a view to evolving their own implementation of human rights due diligence collectively and in coordination, as well as an evaluation done for the Government of Norway on integrating the Guiding Principles in the context of development cooperation. Another type of initiative presented was the Alliance for Torture-Free Trade, an initiative of Argentina, Mongolia and the European Union aiming to end the trade in goods used for capital punishment and torture.<sup>7</sup>

38. A panel on the role of State-owned enterprises provided participants with examples of current practices from different regions and sectors, including Sweden, Norway and the Republic of Korea, where the integration of the Guiding Principles into their due diligence processes has already begun. Despite the growing awareness regarding the important role of State-owned enterprises, action by Governments in that area is still lagging in many regions and sectors. It was noted that the OECD Due Diligence Guidance, together with the Guiding Principles, provided all the necessary clarity on what needed to be done, but most Governments and State-owned enterprises were not leading by example as they should. For example, an OECD study of State-owned enterprises in nine Asian countries<sup>8</sup> showed a range of practices in relation to human rights, reflecting differing national legislative policies and market forces. As an example demonstrating the potential for leadership by State-owned enterprises, it was noted that 49 per cent of the members of the boards of Swedish State-owned enterprises were women, compared with 9 per cent in the private sector.

39. Another Forum agenda item linked to the broad issue of improving policy coherence was the question of the compatibility of investment treaties with human rights, and the extent to which such treaties can and should address human rights matters. Speakers highlighted the increasing calls for a balancing of rights and obligations between States and investors in the investment treaty regime, which was part of a wider debate. Examples of recent investment treaties that addressed that issue were highlighted, including the Dutch model bilateral investment treaty and the Morocco-Nigeria bilateral investment treaty, which included references to sustainable development, corporate responsibility and the protection of human rights and the environment.

### C. Realizing access to effective remedy

40. Forum discussions centred on the third pillar of the Guiding Principles, including discussions on the relationship between human rights due diligence and determinations of corporate legal liability under national law, with insights provided by the OHCHR Accountability and Remedy Project.<sup>9</sup> A session organized by OHCHR explored the interconnectedness of different grievance mechanisms, with a particular focus on the third phase of the project, which aimed to analyse how non-State-based grievance mechanisms situated within a “regulatory ecosystem” fit within the “family” of grievance mechanisms.

41. With respect to national-level developments, the representative of Belgium announced the drafting of a set of recommendations for an effective domestic remedy and the issuance of a publication<sup>10</sup> to inform organizations about how they can comply with their human rights duties and provide compensation for victims and which includes a list of the existing remedy mechanisms.

<sup>7</sup> See [www.torturefreetrade.org/](http://www.torturefreetrade.org/).

<sup>8</sup> Cambodia, India, Indonesia, Kazakhstan, Malaysia, Pakistan, Republic of Korea, Turkey and Viet Nam.

<sup>9</sup> See [www.ohchr.org/EN/Issues/Business/Pages/OHCHRAccountabilityandremedyproject.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRAccountabilityandremedyproject.aspx).

<sup>10</sup> See [www.developpementdurable.be/sites/default/files/content/en\\_brochure\\_droits\\_de\\_lhomme\\_062018.pdf](http://www.developpementdurable.be/sites/default/files/content/en_brochure_droits_de_lhomme_062018.pdf).

42. The Human Rights Council, in its resolution 38/13, requested the Working Group to analyse further the role of national human rights institutions in facilitating access to remedy for business-related human rights abuses and to convene a two-day global consultation on those issues, open to all stakeholders, and to inform the Council by its forty-fourth session as appropriate. In preparation for the requested report, the Working Group convened a session to gain a better understanding of the existing mandates, policies and practices of national human rights institutions concerning access to remedy for business-related human rights abuses. Representatives of national human rights institutions from all the regions had the chance to share their mandates and challenges and to learn from peers. Among the main challenges they identified were building trust among the different stakeholders, the need for the adoption of the Guiding Principles into national laws and the need for training and awareness-raising on issues regarding business-related human rights abuses.<sup>11</sup>

## IV. Corporate respect for human rights

### A. Towards effective human rights due diligence? Challenges and emerging practices

43. A major focus of the 2018 Forum was the requirement set out in the Guiding Principles for companies to carry out human rights due diligence. A key session in the programme, organized jointly by the Working Group, OECD and OHCHR, highlighted the alignment between the concept of human rights due diligence contained in the Guiding Principles and that set out in the OECD Due Diligence Guidance.

44. It was noted that the Guiding Principles make it clear that all business enterprises have an independent responsibility to respect human rights and that, in order to do so, they are required to exercise human rights due diligence to identify, prevent, mitigate and account for how they address impacts on human rights. The introduction of that concept was one of the major contributions of the Guiding Principles.

45. It was further noted that the release in 2018 of the OECD Due Diligence Guidance had provided another important step forward in helping to clarify what human rights due diligence involved, in practical steps.

46. Both the members of the Working Group and representatives of OECD highlighted that the Working Group report on due diligence and the OECD Due Diligence Guidance were fully aligned, both on key elements and their assessment of gaps/challenges in implementation. They noted that convergence was critical, and responded to calls from business for harmonization and removed doubt about what responsible business conduct was in practice. Lack of guidance and clarity could no longer be an excuse for inaction. Importantly, the OECD Guidance acknowledged that human rights due diligence could and should be embedded in strong company management systems and provided practical guidance related to the different steps of due diligence reflected in the Guiding Principles. Applying a human rights lens to policies and due diligence processes embedded across company management systems could be a means of achieving greater operational consistency across different jurisdiction and for staying ahead of the curve regarding regulatory developments across a range of responsible business conduct issues.

47. The members of the Working Group and representatives of OECD explained that there was also close alignment among the descriptive characteristics of the due diligence process. Namely, due diligence:

- Is preventive (this was underlined to be the most important point)
- Involves multiple processes and objectives
- Is commensurate with risk (risk-based)

<sup>11</sup> Statements from participating national human rights institutions are available at [www.ohchr.org/Documents/Issues/Business/ExecutiveSummaryA73163.pdf](http://www.ohchr.org/Documents/Issues/Business/ExecutiveSummaryA73163.pdf).

- Can involve prioritization (risk-based)
- Is dynamic
- Does not shift responsibilities
- Is appropriate to an enterprise's circumstances
- Can be adapted to overcome the challenge of influencing business partners and other business relationships, through both individual and collective measures
- Is informed by engagement with stakeholders
- Involves ongoing communication

48. As stakeholders grappled with the question of how to speed up effective implementation of this requirement, transparency in human rights due diligence reporting systems was identified as a challenge that most businesses faced. Participants claimed that a high percentage of human rights impact assessments were performed without a real engagement with affected stakeholders and were merely a “ticking box” exercise. In that regard, the demonstration of commitment by top executives and integration of due diligence across corporate functions of the business enterprise were identified as potential solutions. Another gap was the disconnection between corporate policies and local implementation. In that context, the need for collective action and improved communication was identified as key to overcome the challenges.

49. Traceability was another key challenge for companies, in particular when addressing issues beyond tier one in the supply chain. In that regard, participants discussed the practical application of blockchain technology in supporting businesses to reduce risks and to carry out human rights due diligence of their supply chains, as well as its potential use to improve responsible sourcing that depended on the collection of quality and accurate data.

50. Another important means for addressing current challenges was to leverage the role that industry collaboration could play. An example was unveiled at the Forum, where the International Council of Metals and Minerals, currently representing 30 per cent of global mining production, presented a newly approved set of “performance expectations”.<sup>12</sup> They applied to all Council members, with the aim of improving the environmental and social performance of the mining and metals industry, thereby reinforcing their commitment to the Guiding Principles.

51. Another theme in discussions on corporate human rights due diligence was the complexity of value chains and business relationships and the implications for efforts to implement effective human rights due diligence. The importance of working together with both business partners and other stakeholders as a way to enhance human rights due diligence and address systemic issues across the value chain was emphasized. An example from the mining sector highlighted the value of developing a robust mitigation and remediation process, in contrast to disengagement, and ways to support transition from informal small-scale mining to a safer and better organized mining model that would facilitate more effective due diligence. Another highlighted systemic issue concerned the situation of migrant workers. Efforts to address negative impacts on migrant workers employed by companies throughout supply chains included collective action to help improve their living conditions, reimbursement of recruitment fees, developing a comprehensive list of hiring requirements and shifting into a direct hiring model as well as a predeparture training model for workers.

52. An important recurring issue cited by companies was that joint ventures or outsourcing presented challenges to exercising effective human rights due diligence. Discussions also touched on other governance challenges arising in value chains and business relationships. Participants highlighted the use of human rights provisions in contracts, new transparency initiatives and measures focused on prevention.

<sup>12</sup> See [www.icmm.com/en-gb/publications/performance-expectations/pes](http://www.icmm.com/en-gb/publications/performance-expectations/pes).

53. In addition, participants acknowledged the need to address the lack of robust data to evaluate what was working in practice and guidance based on “lagging” or “leading” indicators, among others. Participants learned about relevant initiatives in this context, such as a project to develop indicators to measure the quality of purchasing practices in the apparel industry and a “local voices” programme to engage local communities affected by mining operations through a smartphone application.

54. Human rights risks and issues could differ across sectors, and companies in different sectors might need to develop tailored responses depending on their circumstances. The Forum therefore included several sector-specific sessions for focused dialogue on challenges and emerging practices, including in the oil and gas sectors, the mining sector, the information and communications technology (ICT) sector, the tourism sector, commodity trading, banking, and the food and beverages sectors.<sup>13</sup>

## **B. Small and medium-sized enterprises**

55. Implementation by small and medium-sized enterprises remain an underexplored topic in the business and human rights agenda, despite their prevalence (about 90 per cent of all businesses, contributing up to 35 per cent of total employment in the formal sector).<sup>14</sup> The Guiding Principles stress that the corporate responsibility to respect applies to all enterprises regardless of their size, but also acknowledge that small and medium-sized enterprises “may have less capacity, as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms”. Against this background, a dedicated session examined the different challenges and conditions facing those enterprises and how awareness-raising and capacity-building efforts and policy measures can be better tailored to support them to respect human rights in line with their respective size, capacity, resources and impact on human rights.

56. It was noted that policy measures in place did not – or did so only to a limited degree – address small and medium-size enterprises. Existing measures did not typically apply to them, e.g., the Modern Slavery Act, the French law on duty of vigilance or most existing national action plans. According to participants, given their specificities, small and medium-sized enterprises required information and support in order to successfully implement the corporate responsibility to respect, with the support provided to them needing specific tailoring in a way that corresponded to their realities. Participants noted that the human rights discourse had to become more concrete, less rhetorical and politicized and use simpler language. Other recommendations to widen the uptake of the Guiding Principles among small and medium-sized enterprises include the recommendation to:

- Build on industry-focused partnerships that bring international organizations together with global brands, local business and trade unions, such as the “Better Work” initiative with ILO and the International Finance Corporation
- Engage local governments in efforts to promote the Guiding Principles
- Develop tailored trainings to support efforts to foster a culture of human rights at the grass-roots level
- Improve cooperation and develop a true partnership between global buyers and small and medium-sized enterprise suppliers instead of command and comply-type models
- Reinforce the message that corporate engagement on the Sustainable Development Goals must have respect for human rights (i.e., preventing and addressing harms to people) at the core in all relevant forums

<sup>13</sup> For details about these sessions, see the Forum programme and web page.

<sup>14</sup> International Labour Organization, *World Employment and Social Outlook 2017: Sustainable Enterprises and Jobs: Formal Enterprises and Decent Work* (Geneva, 2017), p. 17.

### **C. Corporate respect for human rights and the Sustainable Development Goals**

57. A key objective of the Forum is to contribute to a better understanding of the connections between sustainable development and business and human rights (A/HRC/38/49, para. 75). Forum participants consistently reiterated the message that embedding respect for human rights in their own operations and throughout value chains was the most important contribution that most businesses could make towards socially sustainable globalization and sustainable development with no one left behind. At the same time, many also noted that although many companies had made public commitments to the Goals, concrete actions and integration of human rights due diligence were less systematic.

58. Despite increasing company reporting on the Goals, as well as gap analyses and target-setting, there is significant progress to be made. Many participants expressed concern about the risk that companies may be using the Goals as a marketing tool. The assessment was that currently, only a few companies are actively integrating the commitment to respect human rights and human rights due diligence as part of their strategy on the Sustainable Development Goals.

59. In a panel dedicated to the topic “Reinforcing the importance of human rights due diligence for realizing the Sustainable Development Goals”, a business representative reminded participants that it was important to continue to underline the fact that no company could have a strategy for the Goals that did not have corporate respect for human rights at its heart.

60. In order to help clarify the connection between contributing to the achievement of the Goals and human rights due diligence, it was pointed out that some organizations were developing case studies that showed what the connection could imply in practical terms. It was noted that lack of guidance could no longer be an excuse for companies. A recent publication by Shift and the World Business Council for Sustainable Development that presented several examples of how business was contributing to the Goals by putting people first was highlighted. The representative of the Danish Institute for Human Rights presented a new database containing examples of how due diligence by companies could contribute to the achievement of specific goals and targets.

61. The High Commissioner for Human Rights underlined the importance of the topic in the plenary of day two, stressing that nowhere was the issue of policy coherence on human rights more critical than when it came to achieving sustainable development and the Sustainable Development Goals. Meaningful human rights due diligence should be seen as one of the most fundamental ways companies could contribute to the global agenda.

### **D. Role of the investment community in driving more and better human rights due diligence**

62. As highlighted by the Working Group in its report to the General Assembly, “Investors can play a significant role in driving wider uptake of human rights due diligence approaches by setting expectations and interacting with the boards and senior executives of the enterprises they invest in” (A/73/163, para. 85) and “good practices are emerging, spurred by benchmarking initiatives [and] investor pressure ...” (ibid., para. 46). These observations provided a starting point for Forum sessions in which participants addressed the role of the investment community as a driver of change. Participants noted that there was growing evidence that respecting and addressing human rights issues – at all management levels and across the value chain – improved risk assessment and long-term sustainability. A key element for investors to exercise leverage is the availability of information on corporate performance, an issue that was highlighted during a session of the Forum, at which findings from the second edition of the Corporate Human Rights Benchmark, assessing 101 of the largest publicly traded companies in the world on a set of human rights indicators, were cited.

63. Among key points emerging from discussions on the role of the investment community were the following:

- In general, the measurement of social impacts, and the effectiveness of efforts to address them, is significantly less developed than for other non-technical risks. In other words, the “S” of “ESG” (environmental, social and governance) risk analysis done by investors and companies currently suffers from a lack of understanding and common approaches and indicators. There is a need for better understanding of the impact of human rights policies and practices on people and on commercial strategies. At the moment, most indicators focus on management performance, but little is known about the impact of policies and processes oriented to respect for human rights.
- There is a disconnect between investors and civil society, particularly groups on the ground that are at the “frontline” of addressing business-related human rights harm.
- Company engagement is a very important and useful tool for investors in driving change in behaviour. However, there is a gap between the information coming from businesses and information from the people affected, conveyed through civil society organizations and stakeholders. With regard to the latter point, the challenge may not be lack of information available from civil society and human rights defenders, but rather the aforementioned “disconnect”, or a lack of platforms for exchange between the investment community and human rights campaigners on the ground.
- Initiatives like Platform Living Wage Financials and Investor Alliance for Human Rights are important steps in taking a more proactive approach to measuring social issues in investment portfolios; however, more needs to be done to engage leadership at the executive level in companies and more mainstream investors to advance changes in practices.
- More transparency and more accurate data are needed from companies concerning their own practices and impact measurement, as well as from investors concerning how effective their engagements are in changing corporate behaviour and conditions for rights holders.

## E. Role of business lawyers

64. In its report on human rights due diligence and its companion paper on business practice, the Working Group included a special focus on the role of business lawyers, citing a “reluctance or even pushback from traditionally oriented legal counsel, both in-house and external” and a “lack of integration of business and human rights into the core advisory services of corporate law firms” (A/73/163, paras. 25 (a) and 35 (b)). At the same time, it identified the great potential for business lawyers to integrate advice on human rights due diligence more widely as part of advisory services for clients, and noted that “some bar associations and large law firms ... endorse the Guiding Principles and acknowledge that human rights should be a core part of the advice provided by a wise counsellor” (ibid., para. 41). The members of the Working Group also observed that there was an emerging view within the legal profession that advice on human rights risk management formed a core component of providing legal and commercial advice to businesses. This observation provided the background for a Forum session dedicated to exploring the role of business lawyers as drivers for more effective human rights due diligence by companies. The meeting was co-organized by the International Bar Association, which has published tools for lawyers on this topic.<sup>15</sup>

65. Participants in the session examined what lawyers could do in practical terms to support businesses in meeting the responsibility to respect human rights as set out in the Guiding Principles. They highlighted how lawyers’ extensive transactional and investigative experience in conducting human rights diligence could support companies, and how they could help balance the demands of the Guiding Principles and deal certainty. Participants affirmed that there was a growing awareness of a connection between business

<sup>15</sup> IBA *Practical Guide on Business and Human Rights for Business Lawyers* and *Handbook for Lawyers on Business and Human Rights*.

and human rights among parts of the legal profession, but that further efforts were needed. It was observed that the increasing number of participants from corporate law firms attending the Forum might be a reflection of growing client demand for lawyers to understand and provide advice addressing the risks of failing to manage and mitigate the full breadth of relevant human rights risks to which a client may be exposed.

## **V. Issues in focus**

66. The Forum programme included a series of sessions focused on issues that have become “standing items”, or that had been identified by the Working Group as emerging or systemic issues that confront the business and human rights agenda.

### **A. Groups at risk**

67. The Forum programme included various sessions to address challenges faced by individuals and groups that may be at heightened risk of becoming vulnerable or marginalized, as well as practices that have proved to work efficiently.

68. At a panel devoted specifically to children’s rights, participants explored different methods of conducting human rights due diligence with consideration of children’s rights and voices as well as the role of different stakeholders in making this happen, including investors, Governments, companies and United Nations agencies. It was highlighted during the discussions that few companies took a specifically child-centred approach and that even where methodologies did exist, they did not go very far beyond addressing child labour, focusing largely on remediation rather than preventive measures. For the first time, the Forum also saw the participation of a child, a former child labourer who shared the challenges that he faced and that other children and adolescents who begin working at a very early age encounter while trying to access education, and highlighting the importance of the need for collective action on the part of all actors in ensuring that children enjoyed all their rights.

69. The Forum included a session organized to help inform a Working Group project to unpack implications for integrating gender considerations in implementing the Guiding Principles. The project would produce recommendations to States and business, and would be presented in a report to the Human Rights Council in 2019 (A/HRC/41/43).<sup>16</sup> Discussions revolved around five aspects of the question: sexual harassment and sexual violence against women; gender-sensitive human rights due diligence; economic inclusion and empowerment of women; the impact of trade, investment and tax regimes on women; and women’s experiences of accessing effective remedies and defending rights. Participants called for recognition by States and businesses of the often disproportionate and adverse impacts on women of trade and investment policies and of business strategies and operations. Participants examined the implementation of a gender-sensitive approach in human rights due diligence and as part of good business practice more broadly, including in providing effective remedies through company grievance mechanisms.

70. The Forum programme also included a session focusing on migrant workers, highlighting the vulnerability of this group to exploitation, human trafficking and modern slavery at all stages of the employment cycle, from recruitment to employment and termination. Discussants agreed on the need to create guidelines for companies and establish adequate tools to allow access to effective remedy. Examples of different initiatives were presented, including the work initiated by the International Trade Union Confederation, working together with ILO and the Government of Qatar towards the implementation of reforms to the *kafala* (sponsorship) system, allowing workers to have access to a committee in case of human rights abuses.

71. Over 200 of the world’s largest companies have publicly expressed support for the Standards of Conduct for Business with regard to discrimination against lesbian, gay,

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<sup>16</sup> See [www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx).



bisexual, transgender and intersex persons.<sup>17</sup> This development was addressed in a dedicated Forum session, at which participants discussed how bridges could continue to be built between activists and the private sector and how mutual trust and accountability could be created.<sup>18</sup>

72. Indigenous peoples' representatives from all regions shared examples of adverse impacts of business activities on their respective communities. Human rights abuse in the context of exploitation of natural resources by national and international companies is a recurrent issue, and participants highlighted challenges related to the protection and documentation of land and resource rights and the need for companies to ensure that any Government-granted licences or agreements are based on free, prior and informed consent. It was stressed that companies were responsible for providing clear and comprehensive information to indigenous communities and must understand and respect their local decision-making processes.

## **B. Human rights defenders, civic freedoms and the role of business**

73. The Forum continued to address the alarming situation for human rights defenders worldwide who speak out against risks and abuse related to business activities and investments. Figures provided by civil society organizations highlighted that attacks against defenders and restrictions on civic space in general continued to rise in 2018. Among the issues of concern were the increase in the criminalization and the killing of indigenous and community leaders. According to data from the Business and Human Rights Resource Centre, members of those groups made up over 50 per cent of cases and killings of community leaders had increased 20 per cent from 2017. The same data highlighted that the agriculture sector had surpassed mining as the most dangerous sector for defenders, with more than 70 cases in the period 2015–2018. A major concern is the growing number of legal threats against defenders, including the use of strategic lawsuits against public participation ("SLAPPs"). This issue was the topic of a dedicated panel discussion, where it was noted that human rights defenders in all regions continued to be seen as obstacles to economic development, suffering intimidation, prosecution, including under the guise of "anti-terrorism" laws, lengthy and expensive lawsuits aimed at silencing them (such as SLAPPs) and attacks. The need for effective laws and policies to protect defenders as well as real commitments by States and companies to engage meaningfully with critical voices was reiterated throughout the Forum.

74. The positive role that business can play in advancing respect for and support to human rights defenders and civic freedoms when they are under attack was also highlighted. Reference was made to a recent report, "Shared space under pressure", commissioned by the Business Network on Civic Freedoms and Human Rights, in which concrete examples of action by companies and business organizations are outlined. Other positive examples of steps taken by various organizations include:

- The statement on human rights defenders and media representatives and the associated complaint mechanism announced by the Fédération internationale de Football Association (FIFA)<sup>19</sup>
- The American Bar Association Justice Defenders Programme, which provides pro bono assistance to human rights defenders pursuing complaints against business-related human rights impacts<sup>20</sup>
- Collaboration between business, Government and civil society in Colombia to protect human rights defenders through a protocol on early warnings and urgent

<sup>17</sup> See [www.unfe.org/standards/](http://www.unfe.org/standards/).

<sup>18</sup> See <http://webtv.un.org/search/panel-on-rights-of-lgbti-people-forum-on-business-and-human-rights-2018/5972148544001/?term=&lan=english&cat=Forum%20on%20Business%20and%20Human%20Rights&page=1>.

<sup>19</sup> See <https://resources.fifa.com/image/upload/ejflcedku14lm2v9zc03.pdf>.

<sup>20</sup> See [www.americanbar.org/groups/human\\_rights/justice\\_defenders/](http://www.americanbar.org/groups/human_rights/justice_defenders/).

action, facilitated by the Centro Regional de Empresas y Emprendimientos Responsables (CREER)

- Platform Living Wage Financials, an alliance of 11 financial institutions which holds monthly meetings aimed, among other things, at facilitating dialogue between investors and human rights defenders<sup>21</sup>

75. The Forum also featured the presentation by the Human Rights and Business Award Foundation of the first Human Rights and Business Award, recognizing the work of human rights defenders from the Global South, to the Brazilian NGO Justiça nos Trilhos. The award ceremony highlighted the courage of civil society organizations and advocates working at great risk to support affected communities and the importance of working collaboratively with local and regional organizations and networks, as well as continued efforts to engage with the private sector.

### **C. Connecting the corporate responsibility to respect human rights and the environment**

76. Despite increasing recognition of the links between climate change and human rights, climate change and business, and business and human rights, several Forum participants noted that there was a lack of action to ensure business accountability for climate change.

77. Forum sessions on environmental impacts of business activity included testimonies from different parts of the world, such as the impact caused in small island States such as Papua New Guinea or Fiji by business operations (i.e., in deep-sea mining); affirmation of the need for business engagement with local communities and for responsible practices; and an example of corporate action to address climate change grounded in a due diligence process carried out over two years that had led to the identification of a long list of risks of adverse impacts on people and the environment, some of which were previously unknown and over half of which were now being managed by the company.

78. Discussions were held on how to move towards a responsible transition to a green economy. Participants noted that if such a transition failed to take human rights into account, it could entail risks that might harm lives and livelihoods, as well as causing financial and legal costs for companies and investors. Participants explored what a “just transition” would imply, highlighting aspects such as leaving no one behind; maximizing climate protection while respecting the rights of workers and communities; the need for companies, investors and Governments to engage meaningfully with affected communities; and the need to avoid “greenwashing”.

79. In other discussions participants addressed environmental issues affecting workers around the world, such as the human rights impacts of toxic substances. Participants focused on the electronics industry at one session, where discussions revolved around inadequate standards of protection; protection of the most vulnerable; opacity of supply chains and traceability; deliberate efforts of certain businesses to delay implementation of standards; failure to realize the right to know, including the right to information about exposure; and failure to realize the right of workers to an effective remedy.

80. Participants at other sessions highlighted the need to respect indigenous communities’ rights and traditions, including with regard to renewable energies and sustainable development, and the importance of Governments and businesses working together in good faith with indigenous communities.

### **D. Technology and corporate respect for human rights**

81. Among the emerging issues addressed at the Forum was the impact of novel and disruptive technologies. At a session on artificial intelligence, participants examined the

<sup>21</sup> See [www.livingwage.nl/platform-living-wage-financials/](http://www.livingwage.nl/platform-living-wage-financials/).

implications of the three pillars of the Guiding Principles (protect, respect, remedy) in the context of emerging technologies. It was stressed that both the tech companies engineering new products and companies deploying them in their business needed to exercise due diligence and consider how their actions might impact on human rights. Key issues discussed included the need to avoid discriminatory effects in programming systems and building in controls on data gathering and surveillance to prevent misuse of sensitive information. Another issue is the impact of automation: participants discussed the extent of corporate responsibility to assist workers when jobs were automated out of existence. It was suggested that responsible business action and human rights due diligence needed to involve engagement with workers and trade unions and the provision of fair warning to those affected. However, participants underlined the need to further clarify the practical limits on what business was expected to and could do in such scenarios and where to draw the line of responsibility between government and business action.

82. Focusing on opportunities provided by new technology for the field of business and human rights, participants at one session asked how human rights due diligence could be scaled up through the use of blockchain technology. They highlighted the potential of such technology as a means for addressing the challenge of creating a structure in supply chains that tended to be unstructured and lacked visibility. The technology allowed for understanding the object of the chain, its owner and the specificities of the process, and could provide better traceability and transparency in the transaction analysis recording, for example, all the information relating to certificates of origin. A fundamental challenge remained, however, with regard to ensuring the quality of the information that was input. Blockchain technology was seen by participants as a tool that presented interesting potential for improving human rights due diligence and access to remedy for human rights violations once the existing limitations were overcome. At the same time, it was stressed that technology was not a silver bullet solution and could not replace meaningful engagement with affected stakeholders.

## **E. Implementing the Guiding Principles in conflict and post-conflict contexts**

83. The Working Group organized a session to address new ways to strengthen corporate respect for human rights in conflict and post-conflict contexts as part of the initial consultation process to inform its project to clarify the practical steps that companies, investors and States should take to implement the Guiding Principles in such settings.<sup>22</sup> The member of the Working Group who led the discussion recalled that some of the worst human rights abuses involving business often occurred amid conflict over the control of territory, resources or political power and that in the commentary to the Guiding Principles, it is noted that the human rights regime could not be expected to function as intended in those contexts; this had implications for both State action (in particular home States, as host States were unable to protect human rights or were themselves actors in a conflict) and corporate human rights due diligence. The Working Group member recalled that the Guiding Principles spell out expectations for both Governments and companies, and explained that the new project would seek to unpack further practical guidance. Underexplored questions that the Working Group project aims to address include:

- What does “enhanced” human rights due diligence, which companies are expected to undertake, mean in practical terms?
- What is the role of business in transitional justice?
- What concrete elements of human rights and conflict-sensitive practice should be adopted by host and home States, international financial institutions, private investors and companies in post-conflict and reconstruction situations?

<sup>22</sup> See [www.ohchr.org/EN/Issues/Business/Pages/ConflictPostConflict.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/ConflictPostConflict.aspx).

## VI. Overall key messages and takeaways

84. Key messages emerging from Forum discussions, as summarized by the members of the Working Group, included the following observations:

(a) Although some States are taking action to incentivize business respect for human rights through legal developments, multi-stakeholder platforms, national action plans and economic incentives, including public procurement, economic diplomacy and in their roles as owners and investors, government action and leadership remains the biggest gap. Linked to this, policy coherence at regional, national and global levels remains a fundamental challenge. For example, development finance and investment promotion are areas where there is little real implementation of the Guiding Principles;

(b) Following on from a previous recommendation of the Working Group (A/HRC/38/49, para. 87 (e)), there is a need to develop “regional races to the top”. There are some promising developments in this regard as seen, for example, by commitments by some Governments in Asia, Europe and Latin America. However, much more is needed. There is a need for greater changes of mindset within both Governments and businesses, with stronger action towards including human rights in the “DNA” of economic policy and corporate frameworks;

(c) A limited number of companies are currently implementing due diligence as a requirement throughout their business operations. Emerging good practice approaches for corporate human rights due diligence should continue to be built upon and scaled up across all regions (*ibid.*, para. 87 (m));

(d) The financial sector and the investment community are important drivers of change. Investors, together with benchmarking and rating initiatives as well as ESG analysts, are increasingly recognizing the importance of human rights due diligence, both by the companies and as part of the investment decision process. They should do more to develop common approaches and require human rights due diligence by companies;

(e) More strategic partnerships among key actors at several levels are needed in order to further advance the implementation of the Guiding Principles;

(f) Human rights defenders are critical partners for responsible business, sustainable development and rule of law. Governments and companies must work with human rights defenders as well as with affected communities and workers, whose voices must be heard and their opinions taken into account;

(g) Companies need to translate their commitments into action on the ground and throughout their supply chains;

(h) Small and medium-sized enterprises play a key role in the global economy and further capacity-building should be directed towards them;

(i) Respect for human rights must be at the heart of the corporate contribution to the Sustainable Development Goals, with human rights due diligence being the way for business to know and show that they are preventing and addressing adverse impacts on people. Prevention must be seen by States as well as companies as a key element towards the implementation of the Guiding Principles and the achievement of the 2030 Agenda;

(j) The eighth Forum, to be held from 25 to 27 November 2019, will focus on the need for all Governments to demonstrate progress, commitments and plans in implementing the State duty to protect;

(k) It is encouraging that private sector representation at the Forum has reached about one third of participants. The goal is to achieve balanced participation of relevant stakeholders. However, currently too few Governments are participating actively, and the 2019 Forum seeks to address this gap.

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