

**Human Rights Council****Forty-fourth session**

15 June–3 July 2020

Agenda item 5

Human rights bodies and mechanisms**Eighth session of the Forum on Business and Human Rights*****Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises***Summary*

In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises provides an overview of key observations and messages emerging from the eighth session of the Forum on Business and Human Rights, held in Geneva from 25 to 27 November 2019. The theme of the eighth session was “Time to act: Governments as catalysts for business respect for human rights”. The main focus was on the need for all Governments to demonstrate progress, commitments and plans in implementing the State duty to protect and strengthen accountability. The programme of work included more than 60 sessions and gathered more than 2,400 participants from a range of backgrounds, including representatives of States, businesses, civil society organizations and international organizations, as well as affected groups and individuals.

The report does not provide a detailed summary of all the sessions held but, rather, a broad overview and key messages emerging from the discussions. It should be read together with the programme of work, the session concept notes, the statements and the web recordings, which are available online (www.ohchr.org/EN/Issues/Business/Forum/Pages/2019ForumBHR.aspx).

* The present report was submitted after the deadline in order to reflect recent developments.



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. The Forum 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 pursuant to 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 the key observations and messages emerging from the eighth session of the Forum.

3. The programme of work included three plenary sessions and more than 60 parallel sessions organized by the Working Group, OHCHR and other organizations on the basis of extensive consultations and some 300 proposals. The programme of work also included a series of brief "snapshot" presentations on current business and human rights issues.

4. On the basis of a key message formulated at the seventh session of the Forum, expressing the need for Governments to step up action and leadership, participants in the eighth session, the theme of which was "Time to act: Governments as catalysts for business respect for human rights", put special emphasis on the need for all Governments to demonstrate progress, commitments and plans in implementing the State duty to protect and strengthen accountability. Participants took active part in multi-stakeholder discussions and addressed policy initiatives and case studies in both panel discussions and round tables.

5. As the Forum seeks to facilitate dialogue not only on trends and challenges but, equally importantly, on solutions, sessions focused on the practical implications of the "Protect, Respect and Remedy" Framework for a wide range of issues. The Working Group led discussions to unpack what was required for the Guiding Principles to be put into practice, especially in relation to the Working Group's current thematic focus areas, which include broad aspects of government and business policy areas such as national action plans, the State as an economic actor (through State-owned enterprises, for example, and in the areas of trade promotion and development finance), international investment agreements, the role of national human rights institutions and human rights due diligence. The Working Group also explored cross-cutting issues such as gender, sustainable development and access to remedy, as well as the connections between business and human rights and key topics such as corruption, the work of human rights defenders and conflict. In addition, the Working Group held sessions to facilitate multi-stakeholder dialogue on challenges, lessons learned and ways forward focused on each region (Africa, Asia, Eastern Europe, Latin America and the Caribbean, and Western Europe and other States) and two subregions (the Middle East and the Pacific Islands).

6. The eighth session of the Forum was attended by more than 2,400 participants from over 130 States and a wide range of backgrounds (see table below).

Percentage of participants, by affiliation

<i>Category of participating stakeholders</i>	<i>Percentage</i>
Academic institutions	9.6
Private sector (business enterprises, business/industry associations, consultancies, law firms, investors)	30.4
Civil society organizations, affected stakeholders, trade unions and indigenous peoples' groups	32.0

<i>Category of participating stakeholders</i>	<i>Percentage</i>
Multi-stakeholder initiatives	1.3
National human rights institutions	2.9
States	12.7
United Nations entities/intergovernmental organizations	6.7
Other	4.5

7. Participation has increased significantly since the first session of the Forum was held in 2012, when some 1,000 people registered. Private sector representation has also grown steadily, reaching over 30 per cent of the total in 2019. Over 57 per cent of registered participants were women and 58 per cent of those with official speaking roles were women.

II. Key messages from the plenary sessions

A. Opening plenary¹

8. The eighth session of the Forum was opened by the Secretary-General (through video recording), the United Nations High Commissioner for Human Rights, the Vice-President of the Human Rights Council, the Minister for Foreign Trade and Nordic Affairs of Sweden and the Chair of the Working Group. In their opening remarks, they highlighted the important role played by the Forum in helping States and businesses to implement the Guiding Principles and the relevance of the Guiding Principles for achieving the Sustainable Development Goals.

9. The Secretary-General reiterated that the Guiding Principles provided the authoritative framework for businesses and States in preventing and providing remedy for human rights abuses occurring in business operations and welcomed the call for States to step up their efforts, including by adopting regulations to promote responsible business conduct and to provide remedy to affected people. He highlighted the crucial role of civil society in ensuring corporate accountability. Recalling the persistent challenges posed by inequality, the climate crisis and other factors, he furthermore encouraged the private sector to adopt and promote business practices that helped to achieve the Sustainable Development Goals.

10. The High Commissioner stressed the urgent need for States to put the three pillars of the Guiding Principles into practice and to move from making commitments to taking concrete action. States must not only pass or uphold coherent legislation that meets international human rights and labour standards but also develop and implement effective policies, regulations, adjudications, economic incentives and guidance. Moreover, they must promote dialogue among relevant actors. The High Commissioner noted that some progress had been made by companies with regard to respect for human rights and the implementation of human rights due diligence processes. Unprincipled business practices remained, however, and these continued to generate preventable human suffering, impede inclusive and sustainable development and fuel inequalities. She expressed concern about the increase in attacks and killings of human rights defenders and highlighted emerging human rights issues connected to the digital revolution, which required from Governments policy responses grounded in human rights standards.

11. The Vice-President of the Human Rights Council² emphasized that, by endorsing unanimously the Guiding Principles, the Council had established an authoritative framework to prevent and address adverse human rights risks and the impact of business activities. She noted the key role played by the Council in advancing the business and

¹ See <http://webtv.un.org/search/-stepping-up-government-leadership-forum-on-business-and-human-rights-2019/6108649717001/?term=&lan=english&cat=Forum%20on%20Business%20and%20Human%20Rights%202019&sort=date&page=2>.

² The Permanent Representative of Croatia to the United Nations Office and other international organizations in Geneva.

human rights agenda through different activities, such as the retreat of the Council held in Dakar in October 2019, where discussions focused on gaps in addressing human rights abuses by business activities and possible ways forward. She stressed that the theme of the eighth session of the Forum provided a timely reminder for all Governments that it was time to take decisive and concrete action in the discharge of their duty to provide protection against human rights abuses and uphold international human rights law. She reiterated the need to adopt a smart mix of regulatory and voluntary measures, international action and national policies to meet the State duty to protect and foster business respect for human rights. She provided an update on the recent work of the open-ended intergovernmental working group on transnational corporations and other business enterprises.³ In conclusion, she highlighted the role of the Forum as a unique facilitator for open, collective discussions about solutions among all relevant stakeholder groups on an equal footing.

12. The Chair of the Working Group noted that government action was overdue and that it was urgent to adequately address the challenges of today and prevent those of tomorrow. She welcomed the positive, progressive legal and policy developments, such as the adoption of anti-slavery legislation in some jurisdictions and the French “duty of vigilance law”, and the discussions on mandatory human rights due diligence taking place at the European Union level under the Finnish presidency of the Council of the European Union. She welcomed the growing momentum on the development of national action plans on business and human rights in different regions. She encouraged those States that had not already done so to follow and produce national action plans in line with the Guiding Principles and to implement them in a cohesive way. The Chair recalled that effective regulation levelled the playing field and provided legal certainty for companies to discharge their responsibilities under the Guiding Principles and highlighted the growing number of companies openly supporting mandatory human rights due diligence legislation in certain countries.

13. The Chair of the Working Group reminded participants that, despite such developments, people in all regions continued to suffer from business-related harms, often on a large scale, and with irreversible damage. She stressed that more than 152 million children were victims of child labour and that 25 million adults and children were in forced labour, including in global supply chains. Continuous violence and judicial harassment against human rights defenders, the high risks of exploitation faced by migrants, the risks posed by dam failures, discrimination, gender inequality and the risks associated with emerging technologies, among other issues, had been raised by the Working Group as systemic challenges that needed to be tackled. The Chair expressed concern about the fact that most companies still had not adopted effective strategies and policies to fulfil their responsibility to respect human rights.⁴

14. The Chair of the Working Group recalled the need for Governments to advance corporate human rights due diligence as part of standard business practices, and to use all available levers to address market failures and close governance gaps.⁵ Corruption too was a root cause of human rights abuses in many contexts and Governments should lead by example in their role as economic actors. Moreover, Governments should urgently ensure access to remedy for victims and ensure that the particular risks faced by women and girls were duly taken into account when developing regulations or policies to prevent and address business-related human rights abuses. The Chair recalled the importance of developing a common vision for the way forward, through an inclusive and constructive multi-stakeholder dialogue focused on practical solutions.

15. The Minister for Foreign Trade and Nordic Affairs of Sweden shared lessons learned from efforts made by Sweden in seven key areas related to business and human rights, namely: social dialogue; protection of the human rights of women and girls, which was essential for sustainable economic development and not just the right thing to do, as gender inequality was always wasteful; the fight against corruption; human rights-

³ For more information on the fifth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises, see www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session5/Pages/Session5.aspx.

⁴ See www.corporatebenchmark.org/sites/default/files/2019-11/CHRB2019KeyFindingsReport.pdf.

⁵ A/73/163, para. 93.

compliant global value chains; the implementation and follow-up of national action plans; sustainability reporting; and State-owned enterprises as role models of sustainable business.

16. The panellists reiterated that Governments needed to adopt a smart mix of measures to meet their existing obligations to respect, protect and fulfil human rights and foster responsible business practices. Highlighting some of the major issues to be tackled during the eighth session – environmental degradation, climate change, uncontrolled technology development and attacks against human rights defenders – they emphasized the value of strengthening partnerships and dialogue among all stakeholders to address current and future challenges.

B. High-level plenary on stepping up government leadership: from commitments to action

17. The opening plenary was followed by a high-level plenary on the theme “Stepping up government leadership: from commitments to action”, during which the representatives of Finland and Thailand shared their Governments’ experiences, practices and lessons learned in the implementation of the Guiding Principles. The representative of Thailand shared information on the Government’s progress in developing a national action plan and stressed the importance of high-level political will and multi-stakeholder engagement during the process. The representative of Finland reiterated her Government’s commitment to human rights, highlighting its initiative to increase policy coherence across different public financing instruments and to raise awareness about the importance of the Guiding Principles. She announced her Government’s commitment to carrying out a judicial review to assess the need for national due diligence legislation.

18. In their interventions, the participants in the room, among whom were government representatives, provided updates on current initiatives to implement the Guiding Principles and made reference to the importance of promoting dialogue with human rights defenders and civil society, of using a smart mix of policy measures and of developing national action plans through inclusive processes.⁶

C. Plenary on helping States to promote responsible business practices: towards greater coherence at the multilateral level⁷

19. The plenary on global governance and policy coherence gathered senior leaders, including the United Nations High Commissioner for Human Rights, the Assistant Administrator and Director of the Crisis Bureau of the United Nations Development Programme (UNDP), the Director-General of the International Labour Organization (ILO), the Assistant Secretary-General and Deputy Executive Director of the United Nations Children’s Fund (UNICEF) and the Chair of the Working Party on Responsible Business Conduct of the Organization for Economic Cooperation and Development (OECD). It stressed the importance of aligning action at the international level to promote corporate respect for human rights and the need to foster responsible business conduct as essential for achieving the Sustainable Development Goals.

20. The speakers noted that improving policy coherence in State action to foster responsible business practices in line with international human rights standards, including at the multilateral level, remained a challenge despite the fact that different human rights standards seeking to prevent and address human rights abuses in the business context were

⁶ Representatives of the Governments of Belgium, Canada, Chile, Colombia, Georgia, Germany, Greece, Guatemala, India, Indonesia, Italy, Luxembourg, Mongolia, Norway, the Russian Federation, Switzerland and Ukraine, as well as civil society representatives, made statements.

⁷ See <http://webtv.un.org/search/helping-states-promote-responsible-business-forum-on-business-and-human-rights-2019/6109109323001/?term=&lan=english&cat=Forum%20on%20Business%20and%20Human%20Rights&sort=date&page=2>.

mutually reinforcing.⁸ They highlighted the need for more systemic cooperation among international organizations in the promotion of the Guiding Principles and towards achieving the Sustainable Development Goals. Further alignment at the national and regional levels was also called for in order to build coherence, reach scale and level the playing field, not only by international institutions but also by Governments. Moreover, Governments must implement their duty to protect against business-related human rights impacts, including through mandatory measures to drive human rights due diligence and speed up progress for the comprehensive realization of the corporate responsibility to respect human rights. Businesses, on the other hand, must recognize that respecting human rights should be at the core of their operations. The potential role of all interested stakeholders was highlighted, namely through the creation of multi-stakeholder initiatives.⁹ Furthermore, speakers provided examples of ongoing joint projects that provided evidence of the potential for cooperation and collaboration, including the project on responsible business conduct in Latin America and the Caribbean, financed by the European Union and jointly implemented by ILO, OECD and OHCHR in collaboration with the Working Group.¹⁰ Another example was the recently signed partnership between OHCHR and the United Nations Environment Programme (UNEP), which aims to strengthen cooperation to protect environmental human rights defenders and avoid environmental harms. Furthermore, partnerships involving UNDP, UNEP, UNICEF, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), OHCHR, ILO, OECD, the International Organization for Migration (IOM) and the European Union have contributed to promoting and implementing the Guiding Principles in Asia, including by assisting Governments in developing national action plans.

21. Speakers emphasized that a more systematic collaboration at the international and regional levels had to be accompanied by greater engagement with the private sector and with States in order to protect and respect human rights effectively on the ground. They recalled that the Guiding Principles provided a framework for identifying the various stakeholders' respective duties and responsibilities in that regard.

D. Closing plenary¹¹

22. The eighth session of the Forum concluded with the Working Group and key stakeholders sharing their views of the main takeaways. The Working Group welcomed the increased interest in the Forum, with over 3,000 registrations received, and the continuing trend of increasing participation from the private sector. It stressed the importance of bringing more businesses into the discussions so that they could better understand the importance of embedding human rights in their operations. Notwithstanding the increase in government representation, the Working Group regretted that representation from the capitals was still insufficient. Some participants emphasized that, despite some efforts by certain States to implement a smart mix of soft and hard laws, Governments in general were still not complying with their duty to protect, demonstrating insufficient political will and a lack of policy coherence, and continued not to lead by example.

23. The first statement from stakeholders was delivered by the representative of the indigenous peoples' caucus, who called for greater respect for indigenous peoples' rights and urged States to implement the right to free, prior and informed consent in accordance with international standards as a precondition for preventing human rights abuses and guaranteeing the right of indigenous peoples to self-determination. The representative denounced the continuing attacks against indigenous peoples legitimately defending their

⁸ The Chair of the OECD Working Party on Responsible Business Conduct pointed participants' attention to the joint OHCHR-OECD-European Union-ILO publication entitled "Responsible business: key messages from international instruments" (October 2019).

⁹ Alliance 8.7, the secretariat of which is hosted by ILO, was highlighted as a multi-stakeholder initiative that promoted the achievement of the commitments made in the 2030 Agenda for Sustainable Development in respect of eliminating child labour and modern slavery.

¹⁰ See www.ohchr.org/EN/Issues/Business/Pages/JointProjectResponsibleBusinessConduct.aspx.

¹¹ See <http://webtv.un.org/search/closing-plenary-forum-on-business-and-human-rights-2019/6109659719001/?term=&lan=english&cat=Forum%20on%20Business%20and%20Human%20Rights&sort=date&page=1>.

rights, their lands and the environment, in particular indigenous leaders and indigenous women, as well as the increased stigmatization, persecution and criminalization of indigenous peoples. In that context, she emphasized the importance of access to justice for victims and of the third pillar of the Guiding Principles, ensuring access to an effective remedy. The representative called for broader consultation with regards to the international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, and its availability in all United Nations languages. She welcomed the presentation of the report of the Working Group to the Human Rights Council on the gender dimension of the Guiding Principles (A/HRC/41/43).

24. A representative of a multinational company stated that it was important for stakeholders to participate meaningfully in due diligence processes so as to ensure a proper dialogue and meaningful exchanges between businesses and communities affected by their operations with the view to identify early on, and to better understand, the potential human rights impacts and risks of projects on the environment and on people.

25. A trade union representative welcomed the increasing number of States that had adopted or were considering adopting mandatory human rights due diligence measures as part of a smart mix of policy tools to incentivize companies to respect human rights and adopt sustainable business practices. The importance of holding corporations accountable for adverse human rights impacts was highlighted. The representative welcomed the focus placed by the Forum on the growing risks to human rights arising from the climate crisis and from the use of new technologies in the future of work and, in this context, called for ensuring labour protection and rights, including the rights to freedom of association and collective bargaining.

26. Reflecting on the experiences of several multi-stakeholder initiatives in the area of business and human rights, one speaker welcomed the major focus on the first pillar of the Guiding Principles (the State duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication) and the call upon States to meet their obligation in that respect. He noted as positive the increase in the number of sessions focusing, among other things, on human rights challenges and technology, the attention paid to benchmarking as a tool for strengthening corporate accountability and the greater emphasis placed on the role of investors. He expressed concern that evidence of effective human rights due diligence remained the exception, while due diligence as a “box-ticking” exercise remained the norm. While recognizing the timely focus on the need for States to step up action to act against business-related human rights abuses, the representative underscored the need to scrutinize government performance on human rights generally, stressing the alarming trend of increasing threats against human rights defenders worldwide and a shrinking civic space.

27. A representative of a business network challenged the frequent reference made during the eighth session of the Forum to the call for Governments to adopt a smart mix of measures to promote business respect for human rights. He called not just for a smart mix but also for a smarter mix of regulatory and voluntary measures to increase implementation of human rights in practice.

28. Civil society representatives reiterated the need for Governments to move from paper to practice and the importance of finding sustainable and effective measures to ensure meaningful consultation with civil society and affected communities. They stressed that taking better protection measures for human defenders and indigenous communities, as well as effective remedies and guarantees of non-repetition, remained a widespread challenge. More space needed to be made available for civil society organizations and indigenous peoples in international organizations and forums, including within the United Nations.

29. In their closing remarks, members of the Working Group reflected on some key takeaways, which are summarized in section VI below.

30. The following sections provide a brief overview of the sessions held by the Forum.¹²

¹² For more information on the specific sessions, see www.ohchr.org/EN/Issues/Business/Forum/Pages/2019ForumBHR.aspx.

III. State action

31. Participants reiterated the call to States to step up efforts and emphasized that the ambition and political will to improve human rights records on the ground should be demonstrated by the development and enforcement of strong regulatory frameworks on business and human rights. It was highlighted that, in some cases, States themselves violated human rights, either in collaboration with corporate actors or with the means provided by companies, often in the name of national security or development.

32. States were given the opportunity to present opportunities, challenges and lessons learned from recent regulatory and policy developments, including in relation to the development and implementation of national action plans. States played a key role in leading by example in ensuring respect for human rights by State-owned enterprises.

A. Regulatory and policy developments to fulfil the State duty to protect human rights

33. Different stakeholders acknowledged the importance for States to adopt a smart mix of measures, as clarified in the Guiding Principles, including national and international, voluntary and mandatory, measures. Discussions on what a smart mix of measures meant in practice included the following aspects:

- (a) Conceptualization and implementation of new legislation, or strengthening of existing legislation, on business and human rights, with several participants stressing the critical importance of developing effective mandatory human rights due diligence legislation;
- (b) Establishment of processes to develop and update national action plans;
- (c) Establishment of monitoring bodies to oversee the implementation of national action plans;
- (d) Creation of dialogue and peer-learning platforms linking States to businesses and civil society;
- (e) Dissemination of guidance and of training and capacity-building tools;
- (f) Ratification of international conventions and agreement to international standards, including the ILO Violence and Harassment Convention, 2019 (No. 190);
- (g) Reform of legal frameworks for improving access to remedy.

34. Investment agreements (or investment chapters in trade agreements) concluded by States can adversely affect business respect for human rights in several ways. In follow-up to previous sessions of the Forum and with the aim of providing information on the work of the Working Group on providing practical guidance to States on negotiating investment agreements compatible with the Guiding Principles, a session dedicated to this topic was held during the eighth session of the Forum. Challenges and emerging practices were shared among participants with the clear message that ensuring access to remedy was a key priority and necessary for providing a counterbalance in the current environment, where investors had the tools to sue Governments in international arbitration courts.

35. Another session focused on multi-State global initiatives and their potentially adverse impact on human rights, with a particular focus on the Belt and Road Initiative. Participants spoke about the human rights and environmental impacts of such projects and the need for them to be aligned with the Guiding Principles and other international human rights standards. They discussed such potentially negative human rights impacts as forced evictions, loss of livelihoods, bad working conditions and damage to the environment, and the need for accountability, access to public information and, especially, constructive dialogue with local communities. Moreover, participants highlighted the need to collaborate to identify options for developing sustainable infrastructures, paying particular attention to

the situations of individuals at heightened risk of abuse, as emphasized in the G20 principles for quality infrastructure investment.¹³

36. At a session on the protection of human rights in the future of work, participants highlighted the urgent need to reform labour regulations to protect workers' rights in a rapidly evolving world of work, including from abuses arising from the use of digital technology.

37. Participants in a session on the elaboration of an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises¹⁴ discussed the latest updates in the development of such an instrument.

38. The Working Group and other stakeholders acknowledged that an increasing number of Governments were developing national action plans to implement the Guiding Principles and welcomed the sharing of experiences by Governments on this matter, including on the progress they had made, on the challenges they had encountered and on the innovative approaches they had taken in the development and implementation of national action plans.¹⁵ Among the key messages and elements of lessons learned were the following:

- (a) Strong leadership, commitment and high-level political will were needed;
- (b) It was necessary to address the lack of understanding of the link between business and human rights, including by raising awareness of the Guiding Principles within State institutions and governmental departments/agencies, as well as among all stakeholders;
- (c) In order to foster shared ownership, the process of drafting national action plans needed to be inclusive, participatory and transparent;
- (d) In order to build synergies and strengthen vertical and horizontal policy coherence, it was necessary to ensure a participatory approach to identifying stakeholders and to include all businesses, regardless of their size and sector, and all government ministries;
- (e) It was important to manage the expectations of all the different stakeholders and to prioritize and identify the most urgent human rights issues;
- (f) It was critical to conduct a national baseline assessment that included the identification of essential business and human rights issues prior to the development of a national action plan;
- (g) The issue of horizontal policy coherence, including in the context of the implementation of the Sustainable Development Goals, needed to be addressed;
- (h) An environment conducive to business respect for human rights had to be created, with more ambitious incentives for companies and for promoting a race to the top, as part of a smart mix that included mandatory measures such as human rights due diligence legislation;
- (i) Human rights defenders had to be better protected and the practice of filing strategic lawsuits against them had to stop.

39. Voluntary peer learning among States was also highlighted as a positive initiative for learning and sharing experiences. It was noted that such an exercise would require resources and collaboration.

¹³ See www.mof.go.jp/english/international_policy/convention/g20/annex6_1.pdf.

¹⁴ See Human Rights Council resolution 26/9.

¹⁵ Statements concerning developments around existing national action plans or plans to develop such plans were provided by representatives of the Governments of Chile, Finland, Germany, Greece, Guatemala, Italy, Luxembourg, Mongolia, Russia, Switzerland and Thailand, among others in other sessions. For a video of the main session on this topic, see <http://webtv.un.org/search/-stepping-up-government-leadership-forum-on-business-and-human-rights-2019/6108649717001/?term=&lan=english&cat=Forum%20on%20Business%20and%20Human%20Rights%202019&sort=date&page=2>.

B. Realizing access to effective remedy

40. While participants addressed the systematic challenges faced in virtually all business sectors in ensuring access to an effective remedy in line with the third pillar of the Guiding Principles and the policy recommendations arising from the OHCHR Accountability and Remedy Project,¹⁶ they also discussed challenges specific to certain business contexts, such as that of digital technologies.

41. With respect to specific challenges, participants highlighted that, in most cases of displacement caused by natural disasters, major infrastructure projects such as dams and agribusiness and extractive industry activities, there was a systematic failure to provide victims with an effective remedy or compensation. The question of parent companies that might face expansive liability for the actions of their overseas subsidiary companies was also raised.

42. In another session, participants discussed the role of national human rights institutions and the factors that affect their ability to provide access to remedies for business-related human rights abuses. Examples were given of the challenges and limitations that such institutions faced in facilitating access to remedy and of effective strategies for overcoming them.

43. The role of mediation in the context of access to remedy was also discussed, with participants agreeing on the need for specific preconditions to ensure that the mediation process complements, but does not replace, access to judicial remedies and comply with effectiveness criteria under principle 31 of the Guiding Principles, including by addressing power imbalances between the parties.

C. Leading by example

44. The programme of work included various sessions on the role of States as economic actors and on the expectation that States, as primary duty bearers under international human rights law, should lead by example (A/HRC/32/45, para. 94).

45. One session was dedicated to the role of public investments and, especially, public pension funds in scaling up respect for human rights. Information was shared on the experiences of the councils on ethics of two national pension funds: the Council on Ethics of the Government Pension Fund Global of Norway and the Council on Ethics of the Swedish National Pension Funds. The representatives of both councils explained how they had addressed human rights risks and embedded the Guiding Principles in their work. Furthermore, they reflected on how to exercise leverage to achieve more human rights-compliant business practices, including through the development of “expectation documents” on both human rights and children’s rights and on investigations. Participants noted that such initiatives had great potential to help to mainstream the Guiding Principles in the investment community and to drive more responsible business practices in line with the Guiding Principles.

46. The promotion of human rights through public procurement, in line with target 12.7 of the Sustainable Development Goals, was discussed. Public procurement was seen as important for upholding respect for human rights in the business sector. Challenges remained, however, including: insufficient political commitment by Governments and policymakers, a lack of understanding by procurers, a lack of policy coherence, the absence of a gender-sensitive approach in most countries, a lack of peer-learning platforms and the continuing presence of corruption in public procurement.

47. In another session, participants addressed the role of State-owned enterprises, which were acknowledged as an enduring and significant feature of the global economy that could have major environmental, social and human rights impacts. It was noted that, while some State-owned enterprises were leaders in terms of responsible business conduct and human rights, others lagged behind and were involved in business-related human rights abuses.

¹⁶ See www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx.

The key message from the session, which was led by the Working Group, was that there was a need for State-owned enterprises in all regions to step up and lead by example.

D. Multi-stakeholder initiatives

48. One session was dedicated to multi-stakeholder initiatives (formal or informal collaborations among Governments, businesses, investors and civil society organizations) aiming to define and monitor the responsibility to respect and protect human rights and to provide remedy for any adverse impacts on human rights. The participants in the session discussed the need for multi-stakeholder initiatives to meet certain conditions in order to have a positive impact, including consensus-building and identification of common ground and balance of power within the initiatives. Concern was raised regarding the fact that many of these initiatives had been developed before the adoption of the Guiding Principles. Consequently, the initiatives should be revised to better reflect the responsibility of businesses under the Guiding Principles.

49. The increase in the number of private business initiatives to prevent, address and account for negative impacts was discussed in a session on that topic, at which participants emphasized that such initiatives should not replace the State duty to protect human rights. Furthermore, it was stressed that businesses should not be the only driving force behind such initiatives, to prevent them from seeking to serve their own interests and avoid “audit cheating”, understood as audits managed by top managerial officials with poor human rights knowledge. Data to assess the positive impacts of corporate social responsibility initiatives, including multi-stakeholder initiatives, and ethical trade certificates remains insufficient or inexistent.

E. Regional dialogues

50. The Working Group convened specific sessions on facilitating multi-stakeholder dialogue on challenges, lessons learned and ways forward to achieve progress in each of the following regions: Africa, Asia, Eastern Europe, Latin America and the Caribbean, and Western Europe and other States. Subregional dialogues focused on the Middle East and the Pacific Islands were also held.

51. In the regional dialogue on Eastern Europe, participants discussed initiatives taken by States, civil society actors and businesses to enhance protection against business-related human rights abuses and to strengthen accountability and access to effective remedies. Drawing on the experiences of those countries in the region that had developed a national action plan on business and human rights and of those in the process of developing one, the session provided an opportunity to discuss lessons learned from these initiatives, as well as from inter-State cooperation and peer-learning efforts. Participants discussed the preconditions for achieving an environment conducive to business respect for human rights, such as: strong institutions and the rule of law; the protection of civic space; a strong regulatory framework; and good practices from the development of inclusive national baseline assessments as a precondition for effective and inclusive national action plans. They also discussed the importance of integrating human rights into economic diplomacy communities and State-owned enterprises and public procurement as areas in which the State had to lead by example.

52. Participants in the subregional dialogue on the Middle East discussed the business and human rights dimension of some of the specific challenges businesses faced in respecting human rights in the subregion, including in the context of refugee crises and migration, gender equality and discrimination. Opportunities for engagement and progress with States, businesses, civil society organizations and other stakeholders working together were identified, including for strengthening trade unions, labour and civil rights protections, transparency and access to remedy. The development of national action plans was considered a first step to improve business respect for human rights, and youth were recognized as a driving force in this area.

53. Participants in the subregional dialogue on the Pacific Islands highlighted the business and human rights dimension of climate change and the negative impacts of the exploitation of natural resources, including fishing, deforestation, mining and tourism, on

people and the environment. The fact that some of those most affected, such as indigenous peoples, local communities, migrant workers, women and girls, lacked awareness of their human rights was compounded by the weak understanding by businesses of their responsibility to respect human rights, which in turn led to challenges with regard to combating modern slavery, trafficking and forced labour. Increasing transparency across supply chains and developing national action plans could help States and businesses to address these challenges.

54. The first part of the regional dialogue on Western European and other States built on the report of the Working Group on economic diplomacy (A/HRC/38/48) and the implications of Guiding Principle 4, which reads:

States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

The participants in the session highlighted that export credits, investment guarantees and other public funding schemes for business activities provided an important lever for driving more responsible business practices. They highlighted the importance for State trade and investment agencies and institutions to have strong human rights policies in place. The second part of the dialogue served as a consultation to help inform the Working Group's report to the General Assembly at its seventy-fifth session, on the issue of business and human rights in conflict-affected areas.¹⁷ The discussion addressed the role of home States (as opposed to host States) in supporting responsible business and investment practices in line with the Guiding Principles, in both peacebuilding and post-conflict contexts (see para. 86 below).

55. In the regional dialogue on Asia, government representatives shared their experiences in implementing the Guiding Principles through regulatory and policy frameworks. The session provided an opportunity to discuss the diverse pathways being followed by countries in Asia to promote responsible business conduct.¹⁸ Participants analyzed the impact of inbound and outbound investments by companies and State-owned enterprises domiciled in Asia. They discussed case studies involving special economic zones and mega-infrastructure projects and the negative impacts on human rights, including of indigenous people and local communities. Furthermore, they considered the practical steps that States could take to ensure greater policy coherence between their human rights obligations and efforts to create or maintain an investment-friendly environment. Strategies for strengthening access to remedy in cases with a cross-border or transnational dimension were also discussed.

56. The regional dialogue on Latin America and the Caribbean featured presentations on the European Union-funded joint project entitled "Responsible business conduct in Latin America and the Caribbean".¹⁹ Participants identified the high rates of inequality, environmental degradation and hazardous working conditions, particularly in the resources exploitation sector, as being among the most urgent business and human rights challenges. They highlighted that tackling infrastructure projects and deforestation, including in the Amazon region, had become a priority. The threats and risks faced by indigenous peoples and human rights defenders, especially environmental defenders and measures, and the need to strengthen access to effective remedies for victims were seen as of fundamental importance. Moreover, it was essential to ensure the meaningful and equal participation of affected communities, including indigenous people, in order for development initiatives to be inclusive and for business practices to be sustainable.

57. Participants in the regional dialogue on Africa discussed some common issues preventing States from discharging their duty to protect against business-related human rights abuses, including in the extractive sector. Among those issues were the scarcity of financial and technical resources, corruption and the large size of the informal sector.

¹⁷ See www.ohchr.org/EN/Issues/Business/Pages/ConflictPostConflict.aspx.

¹⁸ The representatives of India, Indonesia, Japan, Nepal, Pakistan and Thailand shared their experiences and lessons learned.

¹⁹ See www.ohchr.org/EN/Issues/Business/Pages/JointProjectResponsibleBusinessConduct.aspx.

Indigenous peoples, nomadic tribes, women and girls, human rights defenders and trade unionists were identified as being at heightened risk of abuse. Participants discussed opportunities for taking a unified approach to common issues across borders and for developing coordinated strategies in cooperation with businesses operating in multiple countries in order to gain a common understanding of the challenges and possible solutions.

58. Information was shared on positive policy and legislative developments in some countries and on the role of national human rights institutions for advancing respect for human rights by businesses and for strengthening access to remedy for harm caused.

IV. Corporate respect for human rights

A. Towards an effective approach to human rights due diligence: challenges and emerging practices

59. All stakeholder groups called upon Governments to step up. Civil society organizations, as well as some Governments, business organizations and investors, backed the call to adopt a smarter mix of measures and mandatory human rights due diligence legislation. Some stakeholder groups, including from the private sector, agreed on the need for more mandatory legislation, alongside voluntary measures, which would allow for a level playing field and legal clarity. All these measures, including at the national and international levels, needed to be aligned. Private sector representatives reiterated the need for additional government support, especially in providing regulation, tools, guidelines and peer-learning platforms. Participants in one session explicitly asked whether businesses preferred action or inaction from Governments. Some business representatives provided examples of when they had called on Governments to do more on business and human rights. Some participants observed that government initiatives were more likely to be practical and effective for business when Governments clarified expectations, levelled the playing field, shifted from policy to practice and provided instructions that were simple to follow. Business support could provide Governments with the confidence they needed to take decisive action, including by introducing new regulatory requirements.

B. Tackling systemic issues across the value chain

60. During the eighth session of the Forum, participants stressed that Governments needed to regulate supply chains in order to prevent human rights abuses from happening. Addressing issues in the supply chains was critical.

61. One panel explored the different legislative approaches taken in Australia, Brazil and the United Kingdom of Great Britain and Northern Ireland, as well as in Hong Kong, China, to eradicate modern slavery. According to some businesses, laws such as the Modern Slavery Act of 2018 in Australia and the Modern Slavery Act of 2015 in the United Kingdom could benefit companies that were serious about and committed to addressing modern slavery. Concern was expressed about the fact such laws did not reach companies that were not part of the global value chain and that, over time, it would be important to broaden the focus of modern slavery laws to encompass all human rights issues. A key concern was the immediate need to build know-how among business practitioners and their professional advisers to ensure that modern slavery laws led to meaningful action rather than to the adoption of a minimum-compliance approach.

62. In a session dedicated to the cocoa sector, participants discussed the work being done to fight forced and child labour, including through the elaboration of two national action plans addressing the root causes of child labour and exploitation in Côte d'Ivoire and Ghana. Participants agreed that tackling poverty and providing education should be accompanied by strengthened transparency from all actors involved in the supply chain as a precondition for eradicating child labour.

C. Role of the investment community in driving more and better human rights due diligence

63. The Working Group highlighted the importance of strengthening dialogue among investors, companies and Governments, recalling the key role of institutional investors in implementing the Guiding Principles and the OECD Guidelines for Multinational Enterprises.

64. At a session led by the Investor Alliance for Human Rights, the question of how Governments could drive human rights due diligence by investors was raised. Participants highlighted that investors, like all business actors, were expected to have human rights policies and due diligence systems in place to identify actual and potential risks, sought to prevent and mitigate adverse impacts, were transparent about risks and how they were addressed and played a role in enabling access to remedy when their investments were directly linked to human rights abuses.

65. One session was dedicated to discussing how government action and public-private partnerships could work to end modern slavery and human trafficking through responsible investment. The Liechtenstein Initiative for a Financial Sector Commission on Modern Slavery and Human Trafficking and its final report, *Unlocking Potential: A Blueprint for Mobilizing Finance against Slavery and Trafficking*, were presented.²⁰ The Working Group emphasized the importance for any such initiative in the financial sector to be supported through a number of policy and regulatory tools, including to increase transparency and promote the development of competition law and public procurement regulation in line with guidelines and effective remedy mechanisms.

V. Issues in focus

66. Several sessions focused on issues that had become standing items or that had been identified by the Working Group as emerging or systemic issues on the business and human rights agenda.

A. Groups at risk

67. A number of sessions addressed the challenges faced by individuals and groups at heightened risk of abuse, as well as effective practices for protecting them.

68. One session focused on the report of the Working Group on the gender dimensions of the Guiding Principles. In follow-up to the discussions held during the seventh session of the Forum, participants raised issues faced by women and girls in the world of work, including violence, sexual and other forms of harassment, inequality, health inequality at work, underrepresentation in positions of leadership and political participation, discrimination, exploitation and abuse in global supply chains and overrepresentation in informal, part-time and casual work. Representatives from different stakeholder groups identified capacity-building through training to employees and employers among the potential solutions. The implementation of flexible maternity leave and childcare support, and greater attention to gender dimensions in the context of access to remedy, were also mentioned.

69. Indigenous peoples' representatives from all regions shared examples of how business activities had had an adverse impact on their communities. They also emphasized that Governments and businesses had an important role to play in preserving the biocultural diversity of the heritage of indigenous peoples. Some representatives expressed concern about the negative effects of natural resource exploitation, including in the mining and hydroelectric dam construction sectors, on their fundamental rights. They called for recognition of the fundamental rights of indigenous people, which included the right to define their own economic development model. They expressed the need for the international definition of free, prior and informed consent to be adapted to individual

²⁰ See www.fastinitiative.org/.

communities and to involve youth, women and older persons, while also noting the potential danger of adapting the standards of free, prior and informed consent in some contexts, as it might lead to business practices that would not be in line with the relevant human rights standards, including on consultation and consent. The issue of building trust between indigenous peoples and Governments was raised. Indigenous peoples' representatives shared examples of initiatives in the renewable energy sector that respected their culture, lands and sacred cultural sites but that were not recognized by States and businesses. In a session dedicated to access to remedy for indigenous peoples, panellists expressed the need for effective judicial and non-judicial mechanisms, highlighting the important role of national human rights institutions and special procedures in monitoring complaints. Indigenous peoples' representatives shared information on current challenges, including limited access to remedy, the poor design of remedial mechanisms, which were also hampered by inadequate understanding of affected communities, their languages and cultures, lack of understanding of free, prior and informed consent requirements by businesses, poor regulatory frameworks, and failure to address risks and intimidation by businesses.

70. In a session dedicated to the role of the private sector in protecting lesbian, gay, bisexual, transgender and intersex persons and their rights, participants discussed the operationalization of the relevant OHCHR standards of conduct.²¹ While noting the current lack of monitoring mechanisms, participants agreed that businesses could be drivers for positive change if they were more inclusive and open on issues affecting lesbian, gay, bisexual, transgender and intersex persons, notably by engaging with local organizations and networks involved in advocating for their rights. Participants also highlighted the potential economic loss of failing to do so. The Stonewall toolkit to help companies to tackle discrimination against lesbian, gay, bisexual, transgender and intersex persons was presented during the eighth session of the Forum as an innovative tool to guide businesses on this matter.²²

71. A session was dedicated to the inclusion of persons with disabilities in the world of work. While noting that persons with disabilities, especially women, faced multiple barriers in accessing employment opportunities and in the workplace, participants said that there had been a shift towards more inclusive hiring practices and an increase in investment and in the number of business leaders with disabilities.

72. Various sessions specifically devoted to children's rights were organized. Marking the thirtieth anniversary of the Convention on the Rights of the Child, one session showcased government policies that scaled up business actions affecting children's rights and the rights of their families, including the following:

(a) Mechanisms for encouraging children to attend school in Zanzibar, United Republic of Tanzania, through the engagement of businesses and families;

(b) Agreements on international responsible business conduct in the Netherlands;²³

(c) The Child Rights and Security Checklist in Canada;²⁴

(d) The Effective Approaches to Ending the Worst Forms of Child Labour in Fragile Contexts programme in the Central African Republic, the Democratic Republic of the Congo and Ethiopia;²⁵

(e) The UNICEF Children's Rights and Business Atlas.²⁶

73. In a report on ending child labour, forced labour and human trafficking in global supply chains, ILO, OECD, IOM and UNICEF called upon businesses to address, at the

²¹ OHCHR, *Standards of Conduct for Business: Tackling Discrimination against Lesbian, Gay, Bi, Trans and Intersex People* (2017).

²² See www.stonewall.org.uk/resources/agents-change-guide-lgbt-advocacy-businesses.

²³ See www.imvoconvenanten.nl/en.

²⁴ See www.unicef.org/csr/files/Child_rights_and_Security_Checklist_ENG.pdf.

²⁵ See <https://assets.publishing.service.gov.uk/media/5e1dd13d40f0b6115499f4d2/Effective-Approaches-Ending-Worst-Forms-Child-Labour-Fragile-Contexts.pdf>.

²⁶ See www.unicef.org/csr/businessatlas.htm.

local level, the socioeconomic vulnerabilities that pushed people into child labour, forced labour and human trafficking.²⁷

B. Human rights defenders, civic freedoms and the role of businesses

74. The High Commissioner, the Working Group and the Special Rapporteur on the situation of human rights defenders highlighted that attacks and killings of defenders were increasing, especially defenders of land and environmental rights in the context of logging, agribusiness, infrastructure projects and mining. Human rights defenders from all regions presented concrete cases, examples and testimonies of killings, disappearances and threats against them, demonstrating the ongoing violence and abuses endured in the context of business activities. They emphasized the urgent need for States to improve accountability and to prevent killings and abuses so as to allow human rights defenders to conduct their legitimate and crucial work. Moreover, mechanisms to protect human rights defenders, adopting a zero-tolerance policy for abuses against them, needed to be created and implemented.

75. The role of States in addressing imbalances of power between businesses on the one hand and local communities and human rights defenders on the other hand was stressed. States, businesses and investors had to see defenders as indispensable allies in understanding local needs and supporting sustainable and responsible business practices. The need to take urgent action to turn the tide of violence against human rights defenders was reiterated with the launch of the Zero Tolerance Initiative.²⁸

76. Demonstrating that positive action was possible despite the very serious situation, the discussions on human rights defenders also featured examples of good practices by Governments, businesses, investors and financial institutions to prevent and address attacks against defenders who raised concerns about business-related impacts. Civil society organizations and human rights defenders recognized that some Governments and businesses were taking steps in the right direction. In follow-up to the previous sessions of the Forum, the Working Group, the Special Rapporteur on the situation of human rights defenders and several non-governmental organizations issued a joint call for action to protect defenders speaking up against businesses' impacts on people and the planet, while recognizing several positive examples.²⁹

C. Corporate respect for human rights and the environment and climate justice

77. With the common understanding that climate change and environmental degradation had a negative impact on human rights all over the world, during the eighth session of the Forum two sessions were dedicated to the environmental and climate change-related harms linked to corporate activities. The objective was for future sessions of the Forum to include climate change as a cross-cutting business and human rights issue, given the relevant role of the Guiding Principles in climate mitigation efforts by States, businesses and other stakeholders.³⁰ Agribusiness, mining and hydroelectric dam constructions were identified as major causes of water, soil and air pollution that were especially harmful to indigenous communities and to women and children in particular. Participants agreed that environmental degradation and climate change exacerbated inequality, poverty and marginalization. They noted that there was a need for action, including through the design, conceptualization and creation of new economic and business models, and that policy coherence on climate change was essential to moving forward.

²⁷ See <http://mneguidelines.oecd.org/Ending-child-labour-forced-labour-and-human-trafficking-in-global-supply-chains.pdf>.

²⁸ See www.zerotoleranceinitiative.org/ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25416&LangID=E

²⁹ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25416&LangID=E.

³⁰ For more information, see www.ohchr.org/EN/Issues/Business/Pages/Climate-Change-and-the-UNGPs.aspx.

78. While noting that certain Governments, investors and companies were taking steps to leverage their influence to improve respect for the environment and human rights, gaps remained, particularly in the supply chains of major companies. Participants highlighted the need for companies to take rights-based climate action and to integrate climate considerations into human rights due diligence processes. Participants shared information on good practices and tools, such as the refusal by the Norwegian sovereign wealth fund to finance oil-related projects in favour of renewable energies and the *OECD Due Diligence Guidance for Responsible Business Conduct*, which had a chapter devoted to human rights and the environment.³¹

D. Technology, modern communication tools and corporate respect for human rights

79. Among the emerging issues addressed at the eighth session of the Forum was the impact of new and disruptive technologies. The High Commissioner recalled the launch of the Business and Human Rights in Technology Project (B-Tech Project), through which OHCHR would seek to provide authoritative guidance and resources to enhance the quality of implementation of the Guiding Principles with respect to a selected number of strategic technology areas.

80. Participants examined how the use of artificial intelligence posed huge challenges in terms of human rights. They flagged the urgent need to better understand and regulate emerging technologies to avoid them having an adverse impact on human rights. They discussed, among other topics, the need to push for ethics and human rights in the computer education curricula, the promotion of dialogue among all stakeholders and the need to guarantee corporate accountability. Participants exchanged information on initiatives such as the Tech against Trafficking coalition, which aimed to combat trafficking through technology.³²

81. A session on potential violations of the right to freedom of expression through Internet shutdowns, censorship and taxes on social media underscored the challenges sometimes faced by businesses in respecting both human rights and State legislation. Participants discussed, among other issues, the need for Governments to demonstrate that measures such as Internet shutdowns were consistent with international human rights standards and proposed, for example, post-shutdown audits to inform companies about future protocols and standards of practice.

82. The use of technologies and biometrics in the military and security sectors, and whether such use was consistent with human rights, was discussed, as was the need for human rights to be respected throughout the development of technologies and biometric tools, including to take into account their intended and unintended use and misuse, in order to avoid risks, for example to the rights to privacy, freedom of expression, assembly, non-discrimination and dignity. The need for more transparency in data collection and use was also discussed. Participants raised concerns about Security Council resolution 2396 (2017), in which States were encouraged to exchange data for counter-terrorism purposes even when they did not have basic data protection policies.

83. Participants discussed the issues raised by automation, analytics and artificial intelligence in modern online advertising campaigns, which in some instances led to the dissemination of fake news, hate speech and fraud and contributed to reinforcing discrimination and inequality. Initiatives such as the Conscious Advertising Network and the Global Alliance for Responsible Media of the World Federation of Advertisers were presented.

³¹ See <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

³² See www.bsr.org/en/collaboration/groups/tech-against-trafficking.

E. Corruption and human rights

84. Two sessions were organized to help inform the report of the Working Group on connecting the business and human rights and anti-corruption agendas (A/HRC/44/43). The sessions aimed to clarify how corruption affected rights holders – specifically, how corruption was linked to, caused or contributed to human rights abuses – and to provide space for peer learning based on practical examples from the business community that had contributed to the prevention of corruption and human rights abuses.

85. Recognizing that corruption had a significant impact on the enjoyment and protection of human rights, affecting especially marginalized groups in general and women and girls in particular, the Working Group emphasized the importance of adopting a people-centred approach when fighting corruption, and highlighted the positive contribution of civil society in that area. Participants agreed that corruption was not solely relevant to the public sector and that there was an urgent need to understand how corruption affected all actors. Partnership and trust were key elements in the fight against corruption and the protection of human rights. Specific training sessions for employees and employers on corruption and its impact were identified by business representatives as useful tools.

F. Implementing the Guiding Principles in conflict and post-conflict contexts

86. With the aim of further informing the report of the Working Group to the General Assembly at its seventy-fifth session, and as part of the consultation process linked to its project on business and human rights in conflict-affected situations,³³ two sessions were dedicated to addressing human rights abuses related to business operations in conflict and post-conflict contexts. Key takeaways included the following:

(a) A panel on the role of home States in promoting responsible investment in post-conflict contexts demonstrated that there was demand for guidance, not so much in the form of normative and legal standards, but rather in the form of practical and operational guidance;

(b) There was a need to elaborate on what responsible engagement looked like when doing business and making investments involved actors that might have committed war crimes or gross human rights abuses. The question was raised of what to do when the “bad guys” were government actors with ties to the sector in question. While it was easy to advise against engaging in such contexts, it was harder to address reality and find ways of minimizing and preventing adverse impacts. One clear message was the need to look at business relationships;

(c) Some useful guidance was emerging, including from Governments, such as the recent guidance from the Netherlands on conflict-sensitive private sector development. However, there was a need to identify what else was needed;

(d) While the discussions emphasized the importance of legislation and mandatory human rights due diligence generally, they also stressed the need to look at other tools for driving responsible business practices. One example provided was the decision by the Government of Canada to consider withdrawing trade support to companies that failed to respect human rights, which could be an effective measure. It was stressed that there was a clear need for creativity and to make good use of the full range of available tools.

VI. Key messages and takeaways

87. The key messages emerging from the sessions and discussions, as summarized by the members of the Working Group, were the following:

(a) Although some States were increasingly taking action to further incentivize business respect for human rights through legal developments, policies, national action

³³ See www.ohchr.org/EN/Issues/Business/Pages/ConflictPostConflict.aspx.

plans, multi-stakeholder platforms and economic incentives, much still needed to be done in terms of policy coherence and government action and leadership, including by engaging in dialogue with relevant stakeholders;

(b) Governments needed to meet their obligations to respect, protect and fulfil human rights and fundamental freedoms. In doing so, they should use a smart mix of measures – a combination of mandatory and voluntary, national and international measures – to foster business respect for human rights in particular contexts. Although legislation was a core element of this mix, and perhaps the strongest driver for creating a level playing field and incentivizing companies to adopt responsible business practices, as underscored by businesses and non-governmental organizations alike, legislation alone was not sufficient;

(c) Governments should, when acting as economic actors, lead by example to foster responsible business practices, including by integrating human rights due diligence into the operations of State-owned enterprises, trade and investment promotion efforts and public procurement operations;

(d) There had been positive developments in “regional races to the top” exercises, with examples from projects in Asia and Latin America and the Caribbean demonstrating the importance of peer learning among stakeholders at the regional and subregional levels;

(e) International investment continued to play an important role in fostering respect for human rights worldwide. Investors were key actors in respecting human rights and should act accordingly;

(f) Rights holders needed to be at the centre of any measure developed and implemented by States, businesses, investors and other stakeholders;

(g) State action to enhance access to remedy for victims was critical and urgent. Not enough progress on access to remedy had been made, especially by Governments, despite the fact that remedy-related obligations were a core part of the State duty to protect against business-related human rights abuses. Peer-learning platforms were crucial for providing States, businesses and other stakeholders with better knowledge on mechanisms for providing access to remedy;

(h) It was important to build capacity and broaden understanding of States’ and businesses’ respective duties and responsibilities under the Guiding Principles in order to enhance efforts towards the effective implementation of the Guiding Principles;

(i) Business activities in conflict and post-conflict areas still required more research, including more guidance for businesses in order to allow them to respect human rights while developing their activities;

(j) Despite playing a key role as potential business partners in achieving business respect for human rights, human rights defenders continued to face intimidation, harassment and attacks by Governments and businesses. States must ensure a safe environment, encourage an open and constructive dialogue with defenders and between defenders and businesses and provide effective remedies for defenders when abuse occurs;

(k) Discriminated and marginalized individuals and groups such as women and girls, indigenous peoples, minorities, migrant workers, children, members of the lesbian, gay, bisexual, transgender and intersex community and persons with disabilities remained especially vulnerable to business-related human rights abuses. States needed to consider and address the particular risks faced by these individuals and groups when developing legislative and policy measures to foster business respect for human rights;

(l) Respect for human rights within supply chains remained a major issue and initiatives, including multi-stakeholder initiatives, must urgently fill any gaps with regards to transparency and collaboration among all those involved in supply chains;

(m) As Governments were pursuing the Sustainable Development Goals and seeking to engage the private sector in achieving the 2030 Agenda for Sustainable Development, it was critical to ensure the development of more strategic partnerships and initiatives among key actors at several levels and that such partnerships were firmly grounded in respect for human rights;

(n) The focus of the ninth session of the Forum, to be held from 16 to 18 November 2020, would be on preventing business-related harm to people and the planet as a key component of efforts to achieve a sustainable future;

(o) It was encouraging that private sector representation at the sessions of the Forum had increased and reached about one third of participants. The goal was to achieve a balance of stakeholders from all regions. Despite the increase in government participation, broader participation from the capitals and decision makers was encouraged for future sessions of the Forum.
