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Совет по правам человека

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Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Доклад Рабочей группы по вопросу о правах человека и транснациональных корпорациях и других предприятиях

Добавление

Внедрение Руководящих принципов предпринимательской деятельности в аспекте прав человека: практика и результаты по итогам пилотных обследований правительств и корпораций*

Резюме

Рабочая группа по вопросу о правах человека и транснациональных корпорациях и других предприятиях в рамках мандата, порученного ей Советом по правам человека в его резолюции 17/4, провела два пилотных обследования по вопросу о внедрении и применении Руководящих принципов предпринимательской деятельности в аспекте прав человека: одно обследование касалось государств, а другое – корпораций. Результаты обследований приводятся в настоящем докладе в обобщенном виде без указания конкретных государств или корпораций.

* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется в полученном виде только на языке, на котором он был представлен.

Цель пилотных обследований заключалась в накоплении методологических основ для выработки инструмента, позволяющего ежегодно выявлять глобальные тенденции в области внедрения Руководящих принципов, содействующие факторы и вызовы в деле их применения и сигнализировать в то же время об ожиданиях Рабочей группы на тот счет, что все государства и все корпорации будут применять Руководящие принципы. В долгосрочном плане цель заключается в том, чтобы генерировать надежную, основанную на фактических данных информацию для систематического отслеживания прогресса, стимулирования подотчетности и для информационного обеспечения деятельности Рабочей группы и других заинтересованных сторон, вовлеченных в разработку методологических указаний по вопросам предпринимательской деятельности в аспекте прав человека.

На вопросник обследования государств ответили в общей сложности 26 государств. Ввиду небольшого количества полученных ответов не представляется возможным сделать четкие выводы. Вместе с тем полученные ответы в целом указывают на то, что правительства все еще находятся на начальной стадии внедрения Руководящих принципов и что начальный этап процесса внедрения может быть продолжительным. Выявление ключевых элементов для интеграции Руководящих принципов в существующие требования относительно учета бизнесом принципов должной осмотрительности может знаменовать собой следующую стадию внедрения Руководящих принципов.

В общей сложности 117 человек, представляющих предпринимательский сектор, заполнили вопросник обследования в онлайн-режиме. Ответы охватывали все отрасли промышленности, предприятия всех размеров, частные и государственные компании и большинство регионов. Такое разнообразие свидетельствует об идущей глобализации Руководящих принципов. Результаты обследования показали, что компании рассматривают необходимость учета прав человека и ведут активную работу в этом отношении с опорой на Руководящие принципы. Главное внимание в предпринимаемых усилиях уделяется разработке программных обязательств в области прав человека, поиску надлежащего инструментария для выявления, оценки и устранения негативных последствий для прав человека, для поддержания связей с заинтересованными сторонами и обновления служб рассмотрения жалоб.

Приложение

[English only]

Uptake of the Guiding Principles on Business and Human Rights: Practices and results from two pilot surveys of governments and corporations

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I. Introduction

1. Resolution 17/4 of the Human Rights Council established the Working Group on transnational corporations and other business enterprises (the Working Group) and requested it to, *inter alia*: promote the effective and comprehensive implementation of the Guiding Principles on Business and Human Rights (the Guiding Principles); identify, exchange and promote good practices and lessons learned; and guide the work of the annual Forum on Business and Human Rights aimed at discussing trends and challenges in the implementation of the Guiding Principles.¹ In implementing these mandated requests, the Working Group undertook two pilot surveys on the uptake and implementation of the Guiding Principles, one to States and one to corporations.

2. The Guiding Principles, endorsed by the Human Rights Council in June 2011, are the authoritative global reference point for preventing and addressing adverse impacts on human rights arising from business-related activity.² They rest on the UN “Protect, Respect and Remedy” Framework, which identifies and clarifies that States and corporations have differentiated but complementary duties and responsibilities for preventing and addressing business-related human rights impacts. The Guiding Principles do not create new international law obligations for either States or businesses, but provide guidance by elaborating on the implications of existing standards under the international human rights framework. The 31 principles spell out concrete action items with recommendations to States as well as business under three “Pillars”: the State duty to protect against business-related human rights abuse, the corporate responsibility to respect human rights, and the need for increased access to effective remedy for victims of business-related human rights abuse. All pillars, however, are meant to work as a dynamic system; the effective implementation of a given pillar will be inter-related to the effective implementation of the other pillars. The Guiding Principles have been widely endorsed by both States and businesses.

3. In undertaking the pilot surveys on the Guiding Principles, the Working Group’s specific objectives and expected outcomes were to: build the methodological foundations for a tool that can be used annually to identify global uptake trends, enablers and challenges of implementation, as well as existing practices and innovations, in order to inform the annual Forum discussions; use such annual surveys as a way to disseminate information about the Guiding Principles globally; and to raise awareness among States and businesses while signaling the Working Group’s expectations in regard to implementation of the Guiding Principles.

4. The long-term vision is to generate reliable evidence-based information to track systemic progress and inform the work of the Working Group and other interested institutions. The Working Group expects the surveys to complement and inform its other activities, including country visits and the development of a Working Group country visit template, in-depth case studies, expert workshops, and consultations. Depending on the availability of resources, the Working Group aims to conduct annual surveys to maximize the utility of comparative data gathered through longitudinal research. The initial pilot surveys have helped the Working Group identify what type of questions can best identify the general policy direction and challenges of States and businesses with regards to the implementation of the Guiding Principles. Lessons from these pilot surveys will thus

¹ A complete list of actions requested of the Working Group in its mandate contained 10 subparagraphs and can be found in resolution 17/4.

² See A/HRC/17/31.

inform the shape of future surveys. The results from the surveys are presented in aggregate form and do not identify individual States or corporations.

II. State survey

A. Background

5. The discussion surrounding a State's duty to protect against human rights abuses within their territory and/or jurisdiction by business actors has developed substantially. Today, policymakers, business and civil society focus not on whether States have a duty to protect against abuse by business enterprises, but on the means by which States could and should fulfill this duty through preventive and remedial measures. The Guiding Principles provide a common language, based on universal principles, to translate such expectations into practice. They provide concrete guidance to States in the form of fourteen principles explicitly directed at the States (principles 1 through 10 of Pillar One, the State Duty to Protect, and principles 25 through 28 of Pillar Three, Access to Remedy).³ The Guiding Principles recognize that 'one size does not fit all': States have the discretion to design the legislation, policies and programs that adjust to their specific needs and unique historical contexts. Still, as stipulated in the Guiding Principles (see Guiding Principle 3), States are expected to provide explicit guidance to businesses with regards to the implementation of the Guiding Principles; ensure that non-judicial and judicial remedy options are available to those communities, workers, consumers, clients and shareholders whose rights have been negatively impacted by business enterprises; and strive to address any potential regulatory or policy gaps that may hinder the fulfillment of their duty to protect against corporate human rights abuses.

6. In 2006 and 2007, the Office of the High Commissioner for Human Rights sent questionnaires to States on behalf of the former Special Representative of the UN Secretary General on Business and Human Rights (SRSG). The surveys, respectively, asked States to identify the range of tools they used to address corporate human rights abuses and the role of the State in Corporate Social Responsibility policies. Response rates were too low for the data to be statistically representative, but the results provided the mandate with useful information on existing practices.⁴ At the time, the Guiding Principles had not been formulated. The purpose of the surveys was to identify practices in the area of business and human rights, to clarify the roles of States and corporations, and to formulate a standard. Now that the Guiding Principles on Business and Human Rights exist, the current mandate decided to conduct a new survey on this topic, but with a different purpose: to identify State trends and innovations in the implementation of the Guiding Principles and to foster a culture of reporting and communication by States in a manner consistent with the concepts and intent of the Guiding Principles. The survey was developed in cooperation with Denver University and the University of Minnesota.

³ See Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31). 21 March 2011. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/90/PDF/G1112190.pdf?OpenElement>. Accessed 13 March 2013.

⁴ Twenty-nine States replied in 2009 after the deadline was extended from April to September: Bahrain, Belgium, Bosnia and Herzegovina, Canada, Chile, Colombia, Croatia, Cyprus, Ecuador, Finland, France, Germany, Guatemala, Honduras, Italy, Japan, Jordan, Lebanon, Mexico, Netherlands, Poland, Portugal, Romania, Rwanda, Spain, Sweden, Switzerland, Tunisia, and the United Kingdom. Human Rights Policies and Management Practices: Results from questionnaire surveys of Governments and Fortune Global 500 firms (A/HRC/4/35/Add.3) 28 February 2007.

7. With the goal of increasing its understanding of the varying forms that State implementation of the Guiding Principles might take, the Working Group complemented the State pilot survey with selected interviews of government representatives and examples of implementation that were presented at the Forum and/or announced publicly on government agencies' websites. These concrete examples of implementation are presented in this report along with the aggregate survey results. It is important to note that the list of examples do not constitute an exhaustive global compendium of practices or an indication that these actions constitute best practice.

B. Survey methodology and overview of responses

8. Of the 193 Member States of the United Nations, 24 answered the pilot survey and two provided relevant information in the form of a letter. One of these States made its letter public.⁵ The responding States were: Australia, Bahrain, Chile, Colombia, Denmark, Dominican Republic, Finland, France, Greece, Guatemala, Italy, Japan, Kazakhstan, Kyrgyz Republic, Latvia, Mauritius, Mexico, Norway, Portugal, Qatar, Romania, Russian Federation, Slovenia, Sri Lanka, Sweden, Switzerland, United States, and Yemen. The Office of the High Commissioner for Human Rights, which provides the Secretariat support for the Working Group, distributed the questionnaire to States via the Geneva-based Permanent Missions and, with the help of the research team, did follow-up calls and sent reminder notes to encourage as many responses before and after the 2012 Forum.⁶ The questionnaire was sent to States in October 2012. The initial deadline for replies was November 10, 2012; this was later extended to January 30, 2013. The UN Working Group thanks the States who responded.

9. The questionnaire comprised four sections, the first of which asked for general contact information. The second section sought to identify trends in States' areas of focus, whether related to industries, impacts or population groups. The third section was divided into five sub-sections and asked about a) general guidance, policies and programs in place, in addition to reporting requirements on companies; b) laws and regulation; c) policy coherence and integration in State agencies beyond those responsible on human rights; d) integration in the areas of trade and investment; and e) access to remedy. The fourth section asked States to provide any comments or recommendations to the Working Group. The survey comprised a variety of question types. Some questions used a Likert, or rating, scale (from one to seven) to measure a State's relative focus on a particular industry, issue, or population. An answer of "one" indicated less focus and "seven" indicated a strong focus. Other questions simply asked States to mark "Yes" or "No," and requested States to also provide qualitative information to expand upon their answer. Some inquired into the types of challenges States face and provided multiple choice options as well as space to expand upon their answers.

10. Care should be taken in interpreting the results. Similar to previous state surveys, no robust conclusions can be drawn due to the low response rate. This small sample size means that the trends and practices included in this report are not representative of all States. While some countries responded to the entire survey, other countries only responded to a few questions. The response rate per question, in other words, varied substantially.

⁵ U.S. Government on Business and Human Rights: Letter to the UN Working Group, 10 December 2012. <http://www.humanrights.gov/2012/12/10/u-s-government-on-business-and-human-rights-letter-to-the-un-working-group/>. Accessed 10 March 2013.

⁶ The research team was comprised of Tricia Olsen, PhD, Assistant Professor of Business Ethics and Legal Studies, Daniels College of Business at the University of Denver; Giovanni Mantilla, PhD candidate, University of Minnesota; Scott Leistiko, Graduate Assistant, Daniels College of Business at the University of Denver.

Time constraints or uncertainty with regards to the answer might explain, in some cases, the absence of an answer. Thus, the report states the number of States that provided a given response rather than providing percentages. Some States found the questionnaire to be long, and some questions to be too general. Other States found the survey helpful to kick-start or guide ongoing discussions in government on how to implement the Guiding Principles.

C. Findings

1. Issues

11. The first section of the survey included a series of questions that aim to understand whether States have a particular focus on certain issue areas, types of impacts, industries or population groups. States were asked to rank focus areas. A response of a “low focus” does not necessarily mean the absence of policies or neglect of the issue area, but that it is not a priority area for policymakers at this time. There are many reasons why States might have a certain policy focus at a given time. A State’s focus on a particular area might be the result of the country’s economic activities, national constituents’ priorities, seeking to address a regulatory gap or responding to a new set of problems arising from new or increasing investments in a region or an industry. A high degree of focus can also be a response to new societal demands. The survey did not inquire on the rationale behind the focus, but simply sought to identify whether any regional or global patterns existed to inform, for example, transnational-level policy coordination.

12. Key issue areas vary by State and this section highlights only those that were frequently noted as a priority for a large number of respondents. Twenty-one States indicated that issues associated with gender, namely equal opportunities and discrimination at the workplace were key for them. Next, 16 States reported a focus on issues related to migrant workers, including fair wages, health, safety and mobility; 16 States also reported a focus on freedom of association. Fifteen states reported a focus on the following issue areas: child labor, environmental pollution or degradation, especially in cases that impact workers or specific communities, and a general focus on challenges associated with violence, armed conflict, piracy, or criminal activity. Thirteen States reported a focus on business activities that reduce access to water or raise food prices while 11 states noted a focus on competition for land use and/or land acquisition, displacement or resettlement of populations. Eleven states also stated a focus on the perceived or actual lack of stakeholder engagement dialogue and/or consultation by civil society.

13. Twelve States indicated a focus on the following industries: oil and gas; consumer products and retail; and food and beverage. Eleven States indicated a focus on manufacturing; infrastructure and utilities; and transportation. Finally, ten States indicated a focus on mining; financial services; and IT and communications. Two States listed Private Security Providers when asked to list other industries of interest.

2. Implementation

(a) General guidance and reporting

14. The Guiding Principles say that States should clearly set out the expectation that businesses domiciled in their territory or jurisdiction respect human rights throughout their operations. This not only helps States fulfil their duty to protect and promote the rule of law, but also provides predictability to business, and to business-society relations with regards to addressing human rights impacts. Such guidance can come in many different forms, including regulation, Corporate Social Responsibility (CSR) policies, specific issue-area guidance, industry programs, or performance standards by institutions that support overseas investments. The first three questions of the “Implementation” portion of the

survey aimed at identifying the extent to which States were explicitly communicating such expectations to businesses—including referencing the Guiding Principles—in government directives, resolutions, policies, or legislation, via business-government and multi-stakeholder dialogues, and/or through other government outreach mechanisms. The survey also sought to understand the degree to which addressing human rights impacts constituted a baseline or minimal expectation of companies that was incorporated into Corporate Social Responsibility instruments.

15. Seventeen States replied they had CSR policies; two had none. Of those, ten reported in this section or elsewhere in the survey that they used ISO 26000, the OECD Guidelines for Multinational Enterprises or the UN Global Compact Principles as references on human rights. States mentioned the UN Global Compact Principles with the greatest frequency.⁷ Two States reported that their CSR policies explicitly mentioned the Guiding Principles, and one referred specifically to the UN “Protect, Respect, Remedy Framework.” Two States stated to have issued its CSR policy before the endorsement of the Guiding Principles and has not yet updated its policy.

16. Why should it matter whether government CSR policies refer to the Guiding Principles explicitly? In part, this is relevant to the effort to achieve coherence among global CSR standards. For example, a company that follows the OECD Guidelines or ISO 26000 can be expected to have a solid base for the implementation of the Guiding Principles. Still, explicit reference helps unambiguous messaging and promotes more concrete dialogues and implementation efforts. In general, integrating the Guiding Principles into CSR policies contributes to avoiding the compartmentalization between human rights experts and sustainability experts in government agencies. Further, such integration ensures that government CSR policies target the potentially negative impacts of business activities, and thus avoids the reduction of the concept of CSR to only a philanthropic endeavor. Finally, explicit mention of these standards helps increase national ownership of the implementation of the Guiding Principles.

17. Seventeen States reported to be working with particular industry groups, such as agribusiness and biofuels, extractives, telecommunication, consumer and retail, and private security to promote respect for human rights. Some States referred to international multi-stakeholder initiatives they supported. One State mentioned the added value of multi-stakeholder approaches to “address difficult issues no one party could solve on their own.” Several States touched on different issues and initiatives related to extractive sector, such as the Extractive Industry Transparency Initiative, the Kimberly Process and the Voluntary Principles on Security and Human Rights. Two States mentioned the International Code of Conduct for Private Security Providers. In agribusiness, one State mentioned their support for initiatives addressing business and human rights, such as the Roundtables on Sustainable Soy and Sustainable Biofuels, the Better Cotton Initiative, and Bonsucro.

18. In addition to industry-specific initiatives, the survey also sought to examine the extent to which State policies mandated or encouraged high-level corporate oversight over human rights due diligence and corporate board involvement in the monitoring of the company’s human rights performance. These actions were understood in the survey as constituting relevant general guidance in the domain of corporate governance and linked to the range of accountability tools available to encourage the effective integration of the Guiding Principle into company’s management systems. Eleven States reported that high-level oversight was mandated and 12 States indicated that corporate board involvement in the monitoring of corporate human rights performance is outlined in State policies.

⁷ The UN Global Compact currently has over 10,000 participants and 56 formal networks. UNGC Website (<http://www.unglobalcompact.org/ParticipantsAndStakeholders/index.html>). Accessed on March 10, 2013.

19. Finally, this portion of the survey inquired whether the State encouraged corporate reporting of respect for human rights. Such reporting can take various forms. States may, for example, request or require due diligence reporting of a specific set of corporations that have a high likelihood of being involved directly in, or contributing to, human rights impacts. Likewise, States may request or require corporations to include information regarding human rights impacts and performance in their sustainability or integrated reporting. Sixteen States indicated they encourage businesses to report on human rights. Of those; ten noted such reports were mandatory; five noted such reports were voluntary; and one State indicated both mandatory and voluntary reporting requirements. Because the question asked about human rights reporting more generally and not on the expectation of companies to report specifically on the implementation of the Guiding Principles, these replies do not indicate whether States accept general CSR and sustainability reporting by companies as reporting on human rights due diligence as defined in the Guiding Principles. Seven States replied they have follow-up protocols to assess the reports issued by companies while seven States noted they did not.

20. The challenge most frequently mentioned by States (eight total) with regards to providing general guidance on business and human rights was the public dissemination of laws to the general citizenry and targeted actors. Several States also indicated that certain types of challenges did not apply to them: ten States reported that they did not have capacity challenges, nine said they did not lack resources for the effective promotion of policies and nine said they did not encounter opposition (lack of willingness) by actors.

21. The interviews of State representatives served to elicit further qualitative information on how implementation occurs in practice, with the goal of gaining particular insight from those striving to steer the process inside a state bureaucracy. The qualitative surveys showed that some States have usefully harnessed existing multi-stakeholder institutional capacities or networks to introduce the Guiding Principles and identify concrete actions to be pursued. Existing actor networks or platforms for dialogue may already be generating trust, knowledge and action on specific issues (transparency, environment, security and human rights, labour rights, among others) or within specific sectors (oil, gas and mining, agroindustry, food and beverages, apparel, etc.) Some States have identified these existing structures not only as opportunities to disseminate the Guiding Principles but also to spark new ideas and interest for joint action in their implementation. These types of actors and platforms already committed to the issue may sometimes need “coaching” training on the specifics of the Guiding Principles and how they relate to previous initiatives. Some misunderstand the Guiding Principles and see them as yet another code of conduct competing with existing frameworks—ranging from the OECD Guidelines for Multinational Enterprises to very specific issue-area implementation codes and processes such as the Voluntary Principles on Security and Human Rights for extractive multinationals. Instead, the Guiding Principles are meant as a “single, logically coherent template” for all States and all businesses in every part of the world, an approach which draws on existing international law, standards and practice, and formulates, after taking into account the gaps in such body of hard and soft law, a series of comprehensive principles.⁸ In addition, the Guiding Principles provide substantial clarification on the role of States and corporations with regards to business impacts that was not present in previous standards.

22. An accepted aspect of modern global governance is multi-stakeholder participation in the making and implementation of rules. The formulation of the Guiding Principles was anchored on a multi-stakeholder approach while at the same time clarifying the differentiated roles of each actor—States, business and civil society. In section three of the

⁸ See Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31), 21 March 2011, page 5.

survey, States were asked the extent to which they interacted with domestic and international non-governmental organizations when designing policies on business and human rights. Nine States said they engaged international non-governmental organizations, two did not; eight States reported they reached out to domestic non-governmental organizations, while one State noted it did not. It is important to note that not all affected persons choose to interact in policy formulation or seek redress of grievances via third parties such as non-governmental organizations, so interaction with non-governmental organizations does not necessarily replace dialogue with affected persons.

23. States have also started to consult with external stakeholders as they design their action plans for implementation of the Guiding Principles. Some States mentioned this was a direct lesson learned from the process led by the former SRSG. States recognize that national implementation plans will only be legitimate, comprehensive and ultimately effective if they are developed in an inclusive manner. This involves consulting not only with internal government audiences but also with relevant external stakeholders. To this end, many States have chosen to liaise with civil society organizations, trade unions and academia, in addition to corporate actors, as they formulate ways to move the business and human rights agenda forward. There are different approaches or steps to this type of consultation. Some States, for example, have held large public meetings with numerous actors at which States share initial ideas and elicit feedback from the audience. Other States have conducted more intimate meetings with several actors to the same end, prior to holding larger public sessions. Some States have carried out consultations directly through their staff, while other States with limited capacity have relied on external experts.

(b) *Policy coherence*

24. The Guiding Principles identify at least three areas where States are expected to strive towards greater policy coherence across their efforts to protect human rights and their decisions and practices related to businesses in the economic realm. One, States need to ensure horizontal integration between human rights and other policy decisions involving business (across departments and issue areas) and vertical integration (having the necessary policy and legal tools to implement international human rights obligations). Two, States should maintain adequate domestic policy space when pursuing business-related objectives, including investment treaties or contracts. And three, States should incorporate the Guiding Principles into the policies and action plans of the multilateral institutions of which they are part.

25. Early lessons indicate that a basic step that can help achieve this coherence would be to ensure that the Guiding Principles do not exclusively reside within those State departments and agencies traditionally focused on international human rights standards (e.g., human rights sections of Foreign Affairs ministries or national human rights institutions). Instead, the Guiding Principles are most effective when they are communicated to and integrated into the daily work of those departments and agencies that interact directly with business and with other States on issues such as trade and investment.

26. The interdisciplinary character of the business and human rights field is both a challenge and potential strength. Implementation of the Guiding Principles ideally would require practitioners and policy-makers in the areas of—for example—production, economic development, infrastructure, trade and finance, to understand and incorporate human rights into their practices, policies, and into the regulatory frameworks that shape and determine how business operate. Likewise, human rights practitioners and those familiar with the protection of victims and litigation ideally would also know and understand business operations and their regulatory environment, whether public or private, State or market-based.

27. The State survey showed 11 States had offered dissemination and training on the Guiding Principles across its departments, six had not. As expected, given the global nature of the creation of the Guiding Principles, the State agency most frequently noted as having a role or mandate relating to business and human rights was Foreign Affairs (11 States). The next most frequent State agencies or departments indicated were national human rights institutions (9), Trade and Commerce (9), and Ministries of Industry (8). States could opt not to choose a given agency from a list provided in the survey. Fourteen States did not mark the Stock Exchange authority, 12 States did not choose Vice-presidencies, Attorney General's Offices and Sovereign Wealth Funds, and 11 States did not chose Export Credit Agencies, while five did. Eight did not choose Ministries of Defense, while only four did.

28. In this section, the survey also asked whether States had specifically adopted policies on public procurement, had developed specific industry guidelines or were developing national action plans. Nine States reported they were specifically fostering business respect for human rights in public procurement, and nine had issued/adopted industry specific guidelines. Eleven reported to be developing Guiding Principles "national actions plans", of which eight were not European or North American States. At the 2012 Annual Forum it was reported that approximately 19 European States were developing national action plans to implement the Guiding Principles. This means that, in total, at least 30 States have reported to be developing national action plans. At the February 2013 Working Group consultation with the UN member states that attended the regular Geneva-based "Group of Friends of the Guiding Principles" session, the Working Group invited Member States to create their own implementation plans for the Guiding Principles, and suggested the creation of a global repository of "national action plans" and other State implementation plans, that could enable and promote the exchange of best practices and lessons learned on State implementation.

(c) *Legislation and regulation*

29. States can provide general guidance to corporations on business and human rights through the dissemination of the Guiding Principles and implementation tools as well as guidance through laws and other types of administrative regulation. According to the survey results, many States declared to have laws that explicitly obligate businesses to respect human rights in the areas of non-discrimination (16 States), labour (15), the environment (12), corporate liability (10), property and access to land (10), privacy law (10), consumer protection (14), anti-bribery (12), and other due diligence requirements on business and human rights (4). States developing National Action Plans and other initiatives aimed at formulating overarching policies on the implementation of the Guiding Principles have embarked in legislative gap analyses or mapping exercises to determine, among others, the extent to which existing laws are adequate to address corporate human rights impacts. This section of the survey also asked States whether they required companies to respect human rights at incorporation or when companies are listed in stock exchanges. Eight replied they did so.

30. Between five and eight States reported encountering challenges in the enforcement of business and human rights-related laws or anticipate encountering challenges in the future. Challenges referred to dissemination, the lack of effective sanctions in the law, capacity to implement the law, judicial capacity, resources, and willingness of corporate actors to comply. Most of the States that reported encountering such challenges were non-OECD countries.

(d) *International trade and investment agreements*

31. The survey aimed at identifying the degree to which the Guiding Principles are informing State regulatory frameworks and policies in the area of trade and investment

activities. This is indeed a key aspect of policy coherence and integration of the Guiding Principles into the function of States that shape markets, corporate conduct and incentives. In 2012 the World Investment Report of the United Nations Conference on Trade and Development (UNCTAD) noted the “more prominent role” of “sustainable development” in investment policies. That reference to “sustainable development”—depending on how it is interpreted—can be a potential entry-point for States and business to address the concrete issue of adverse corporate human rights impacts in the context of international investment. This trend is reflected in the Commonwealth’s new guide, issued in 2013, for developing country negotiators on international investment agreements. The guide explicitly refers to corporations’ responsibility to respect human rights according to the Guiding Principles on Business and Human Rights.⁹ In 2012, UNCTAD also issued a new Investment Policy Framework for Sustainable Development that begins to examine possible ways to incorporate aspects of the Guiding Principles into trade and investment agreements, for example, by adjusting the balance between the rights and obligations of States and investors. This issue speaks specifically to Guiding Principle nine, which urges States to maintain adequate domestic policy space to meet their human rights obligations in business-related policies (e.g. investment treaties or contracts). In order to provide practical guidance for States and investors in this policy area, the former SRSG developed ten principles for responsible State-investor contracts and a checklist for how management of human rights risks could be integrated into such contract negotiations.¹⁰ Both Government and business participants at the 2012 Forum concluded that this guide is a useful tool in the context of contract negotiations.

32. Ten States declared there was coordination between agencies directly involved in human rights and those responsible for trade and investment, which indicates an opportunity to continue integrating human rights into trade and investment policies. This does not necessarily imply that all States have integrated the Guiding Principles into such policies. However, 14 States said they had explicit human rights provisions (including provisions related to environmental issues and labour) in their international trade and investment agreements. Four States said such coordination was not in place. In 2006, the former SRSG on Business and Human Rights asked the same question in a State survey and found that three countries reported including such provisions for public procurement, but that a majority of States did not have trade and investment policies that specifically address human rights.¹¹ The most recent survey illustrates an upward trend in the adoption of such policies.

33. The most recent survey also inquired whether States required incoming investment to undertake human rights impact assessments. The questions aimed at probing whether human rights impact assessments, on their own or part of broader environmental and social impact assessments, were being incorporated into investment agreements and regulatory frameworks. Four States answered they did, eight did not. With regards to outgoing investment, five States said their export and foreign promotion policies included human rights specific provisions, six States declared not to have such provisions. These trends, when compared with the 2006 survey, are largely unchanged.¹² It is worth noting that in 2012 the OECD reviewed its Common Approaches on Export Credit Agencies asking

⁹ Van Duzer, Simons and Mayeda, *Integrating Sustainable Development into International Investment Agreements: A Guide for Developing Country Negotiators* (2013). <https://publications.thecommonwealth.org/integrating-sustainable-development-into-international-investment-agreements-955-p.aspx>. (Forthcoming, April 2013).

¹⁰ See A/HRC/17/31/Add.3.

¹¹ *Human Rights Policies and Management Practices: Results from questionnaire surveys of Governments and Fortune Global 500 firms* (A/HRC/4/35/Add.3) 28 February 2007, pages 8-9.

¹² *Human Rights Policies and Management Practices: Results from questionnaire surveys of Governments and Fortune Global 500 firms* (A/HRC/4/35/Add.3) 28 February 2007, pages 9-10.

agencies to examine how “project-related human rights impacts are being addressed and/or might be further addressed” in relation to their adverse impacts.¹³

(e) *Access to remedy*

34. When adverse human rights impacts exist, victims must be able to seek redress. The Guiding Principles affirm that ensuring access to remedy forms part of the State duty to protect against human rights abuse and generally emphasize the need for increased access to appropriate grievance mechanisms, both judicial and non-judicial, all of which should be consistent with international human rights standards with regards to their procedures and outcomes. Effective State-based judicial mechanisms are at the core of ensuring access to remedy, and should be complemented by other State-based and non-State-based non-judicial mechanisms. The Guiding Principles define a set of “effectiveness criteria” for the operation of non-judicial grievance mechanisms, which should incorporate principles of legitimacy, accessibility, predictability, rights-compatibility, equitability and transparency. The survey inquired how States were meeting their duty to ensure victims’ access to both judicial and non-judicial remedy.

35. The survey asked whether a State’s legal system allows for the prosecution of legal persons accused of committing or participating in human rights violations related to the conduct of business activities within the State’s borders. Fourteen States replied to this question and all provided affirmative responses. Even so, commentary and further explanations by respondents do not provide conclusive information either on the actual practice or the extent to which human rights impacts are being adequately identified, understood and/or, if necessary, codified as a criminal offence. Some States referred to terrorism, money-laundering and bribery as areas in which companies can be considered liable.

36. When asked whether a State’s legal system allows for the prosecution of legal persons accused of committing or participating in human rights violations related to the conduct of business activities beyond the State’s borders, ten States provided affirmative answers. Only three States indicated that their legal system would not support extraterritorial jurisdiction. Limitations to the prosecution of corporate human rights abuses beyond national borders, as they appear in the narrative explanations provided by some States, depend first, on how national legislation addresses corporate human rights violations and second, on the separate legal personality of subsidiary companies with respect to the parent company. Respondents that offered further information referred to rules in international law, which determine the circumstances under which such prosecution would be possible (such as nationality, protective and passive personality principles, etc.).

37. Eleven States confirmed they had non-judicial grievance mechanisms to address business-related impacts, four States noted they did not. Three of the States that have non-judicial grievance mechanisms are non-OECD countries. The survey asked States to indicate, from a list of judicial and non-judicial tools, which mechanisms the State uses to redress business-related human rights impacts and abuses in the country. Nine States indicated they used sanctions while six noted using compensation of some kind (whether financial or non-financial). Six States also reported using environmental rehabilitation while five confirmed they use injunctions or guarantees of non-repetition to ensure prevention of harm. Six States also reported public or private apologies. Only two States indicated they have utilized land restitution.

¹³ Recommendation of the Council on Common Approaches for Official Supported Export Credits and Environmental and Social Due Diligence, <http://www.oecd.org/tad/xcred/commonapproaches.htm>. Accessed on 13 March 2013.

38. Finally, in order to understand the degree of awareness of grievance mechanisms managed by international public financial institutions, the survey asked States to indicate whether such institutions mediated or provided for remedy to people residing in their territory/jurisdiction who had been impacted by projects financed by such organizations. Five States indicated they were not aware of such grievance mechanisms; the rest of the respondents did not answer the question.

D. Examples of implementation of the Guiding Principles

39. The following examples of State implementation of the Guiding Principles include some of those that were shared by representatives of State and regional organizations at the 2012 Annual Geneva Forum. This is not a comprehensive list of all efforts by all States to implement the Guiding Principles. Further evidence is needed to understand the effectiveness and potential areas of improvement of these efforts. However, the examples below represent today's trends in terms of innovation or reforms of early initiatives on business and human rights. Information for this section has been retrieved from the Forum summary documents and video archive that is publicly available,¹⁴ and direct reference has been made to existing online documentation when available.

1. Incorporating the Guiding Principles into corporate social responsibility policies

40. Notions of Corporate Social Responsibility have changed over the past decades. States and regional organizations can help stakeholders converge around a notion of CSR that places the Guiding Principles at its core, and ultimately helps businesses operate on a level playing field. Managing adverse human rights impacts should be a base expectation, complemented by other standards and by expectations of positive social contributions by business, such as the promotion of sustainable and equitable development.

41. In October 2011, the European Commission issued a new strategy on CSR based on a new definition of the term: "the responsibility of enterprises for their impacts on society."¹⁵ This definition allowed the European Commission to capture both positive and negative impacts by businesses and move beyond philanthropy-centered notions of CSR. The Communication explicitly referred to a "core set of internationally recognized guidelines and principles" that companies should use as authoritative guidance. These principles included the Guiding Principles: the European Commission "expects all European enterprises to meet the corporate responsibility to respect human rights, as defined in the UN Guiding Principles."¹⁶ Furthermore, the Commission invited EU Member States to develop their own national action plans for implementation.¹⁷

¹⁴ For an online archive of the 2012 Annual Geneva Forum, see: Annual Forum on Business and Human Rights, see: <http://www.ohchr.org/EN/Issues/Business/Forum/Pages/2012ForumonBusinessandHumanRights.aspx> and http://www.youtube.com/playlist?list=PLYUVFvBU-lodVZ1Ae-SSrWqzHsPiAgjDM&feature=view_all. Accessed on 13 March 2013.

¹⁵ European Commission, A renewed EU strategy 2011-14 for Corporate Social Responsibility, COM(2011) 681, Brussels, 25 October, 2011, page 6. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>. Accessed on March 10, 2013.

¹⁶ European Commission, A renewed EU strategy 2011-14 for Corporate Social Responsibility, COM(2011) 681, Brussels, 25 October, 2011, page 6. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>. Accessed on March 10, 2013.

¹⁷ European Commission, A renewed EU strategy 2011-14 for Corporate Social Responsibility, COM(2011) 681, Brussels, 25 October, 2011, page 13.

Approximately 19 EU States are in the process of elaborating or concluding their national action plans for implementing the Guiding Principles.¹⁸ In June 2012, European Member States embraced that commitment by including it in the European Union's Framework and Action Plan on Human Rights and Democracy.¹⁹

42. As a complement to incorporating the Guiding Principles in the EU's CSR policies, the European Commission set out to develop, through a consultative process, an introductory guide to human rights for Small and Medium Enterprises, as well sector-specific guidance for oil and gas companies, telecommunications companies and employment and recruitment agencies.²⁰ The UN Working Group submitted comments to the draft guidelines encouraging the European Commission, among others, to strengthen its recommendations to companies on how to embed the Guiding Principles into their management systems.²¹

2. Working on specific industry sectors through new multi-stakeholder accountability approaches

43. In 2009, Switzerland—joined by other interested States—began developing an international multi-stakeholder initiative aimed at improving oversight and accountability for private security companies operating in complex environments. This initiative, called the International Code of Conduct for Private Security Providers (ICoC), recognizes that “international law, in particular international humanitarian law and human rights law - does have a bearing on [private military and security companies] and that there is no legal vacuum for their activities.”²² The rationale for the initiative is the fact that a new binding instrument in this area would take time to be negotiated and come into effect; in the

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>. Accessed on March 10, 2013.

¹⁸ See statement delivered by Richard Howitt MEP, European Parliament Rapporteur on Corporate Social Responsibility, on "Challenges for the State Duty to Protect" to the UN Forum on Business and Human Rights, Geneva, 5 December 2012.

<http://www.ohchr.org/EN/Issues/Business/Pages/StatementsduringForum.aspx>. The European Group of National Human Rights Institutions published a discussion paper with general categories of components they suggest European National Action Plans should contain, see: European Group of National Human Rights Institutions: Implementing the UN Guiding Principles on Business and Human Rights: Discussion paper on national implementation plans for EU Member States, June 2012.

<http://www.humanrightsbusiness.org/files/About%20us/file/EU%20NHRI%20Paper%20on%20National%20Implementation%20Plans%20for%20UNGPs%2010612%20SHORT.pdf> Accessed on 10 March 2013.

¹⁹ The Council of the European Union, EU Strategic Framework and Action Plan on Human Rights and Democracy, 11855/12, Luxembourg (25 June 2012).

²⁰ European Commission, My Business and Human Rights: a guide to human rights for small and medium-size enterprises (2013). http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final_en.pdf. Accessed on 13 March 2013.

The three sector guidance documents were expected to be finalized by mid-April 2013. As of 13 March 2013, the exposure draft were available on the website of the Institute for Human Rights and Business. <http://www.ihrb.org/project/eu-sector-guidance/consultation-documents-and-reports.html>.

²¹ Working Group commentary to the European Commission on the sector guidance exposure drafts, 8 February 2013. <http://www.ihrb.org/pdf/eu-sector-guidance/UN-Working-Group-on-Business-and-Human-Rights.pdf>. Accessed 13 March 2013.

²² Switzerland relied on external partners: the Geneva Academy of International Humanitarian Law and Human Rights and the Democratic Centre for the Democratic Control of Armed Forces. A timeline of the initiative is available on line at http://www.icoc-psp.org/ICoC_Timeline.html.

meantime, action and results are needed to protect people and provide clear guidance to business, especially in zones of weak governance or conflict. Progress can be achieved through complementary approaches. The Code of Conduct was launched on November 9, 2010, and the Charter for the Oversight Mechanism of the ICoC was drafted through a consultative process in 2010-2012 that culminated in the successful negotiation of its final text in February 2013. To obtain contracts, companies would be asked by clients—both State and non-State—to follow the ICoC. The UN Working Group on Business and Human Rights made a submission calling for consistency with the Guiding Principles, in particular with respect to the duties of States, business due diligence mechanisms, and effectiveness criteria for grievance mechanisms.²³ To date, more than 600 companies have signed up to the ICoC.

44. A key reference guide related to the initiative is the Montreux Document, directed at States. This document was produced in 2008, after three years of consultations cooperatively led by the Swiss government and the International Committee of the Red Cross. The new Charter of the Oversight Mechanisms references this document, which “reaffirms the obligation on States to ensure that private military and security companies operating in armed conflicts comply with international humanitarian and human rights law,” and contains 70 recommendations, derived from good State practice.²⁴

3. State mandatory human rights due diligence and reporting

(a) *Integrating human rights due diligence into the financial sector*

45. The Peruvian chief financial regulator, the Superintendency for Banks, Insurance Companies and Pension Funds, put out for comment in early 2013 new social and human rights due diligence requirements for banks lending to extractive (and other) projects. The measure was taken to prevent and abate negative financial impacts on the local banking sector as well as corporate human rights abuses that conflicts related to mining projects were causing or contributing to. In some instances, local businessmen, such as truckers, local hotels and restaurateurs were losing business because social conflict pushed clients away. These local businesses in turn were having difficulty servicing their loans from local financial institutions, such as municipal banks or home loan associations. Social conflict was reflecting on banks’ balance sheets. Local financial institutions were provisioning for this risk and for potential loss.

46. An opportunity for risk mitigation arose with human rights diligence and a conflict-sensitive approach to lending. The Superintendency thus proposed to put in place requirements that financiers ask extractive business customers to have a base line on conflict risk, a risk assessment—if need be conducted by a third party—and a mechanism for conflict resolution and mitigation. The Peruvian Superintendency would require of the board of directors of banks at least three actions: to ensure that they have policies and procedures in place to ask of their costumers’ human rights and conflict prevention measures; that outside and inside auditors of financial institutions ensure that the boards of the bank enforce the rules with regard to the requirements on costumers’ human rights due diligence and conflict prevention; and that such policies and procedures and the results thereof be reported to the Superintendency. The Superintendency’s inspection activities will

²³ Working Group commentary on the draft International Code of Conduct, 31 March 2012. http://www.icoc-psp.org/uploads/Comments_Draft_Charter_ICoC.pdf. Accessed 13 March 2013.

²⁴ The Montreux Document “was developed with the participation of governmental experts from Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom, Ukraine, and the United States.” Montreux Document, 2008. <http://www.icrc.org/eng/resources/documents/misc/montreux-document-170908.htm>. Accessed 13 March 2013.

examine compliance and penalize non-compliance (with fines). The measure provides a level playing field for all large financial institutions registered in Peru.²⁵

(b) *Risk management*

47. In 2012, the United States of America introduced draft reporting requirements that requested US businesses persons with aggregate investment in Myanmar exceeding US\$500,000 to submit an annual report to the US State Department. A key purpose of the Reporting Requirements is to ensure that, as companies seek investment in Myanmar, they do so responsibly in a way that minimizes adverse impacts on human rights. Businesses must report annually, among other items, on the “due diligence policies and procedures that address operational impacts on human rights, worker rights, and/or the environment;” on “policies and procedures for community and stakeholder engagement;” on “policies and procedures related to hearing grievances from employees and local communities, including whether grievance processes provide access to remedies, and how employees and local communities [in Myanmar] are made aware of said processes;” on the security providers they are using; and on land and real property acquisition.²⁶

48. Another business and human rights reporting and due diligence requirement by the United States that is related to business and human rights is mandated in section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In August 2012, the Securities Exchange Commission issued rules to implement the legislative act on conflict minerals. These rules apply to a company that files reports with the Securities Exchange Commission for which the use of minerals defined as “conflict minerals” in section 1502—gold, tin, tantalum, or tungsten—is “necessary to the functionality or production” of a product manufactured by the company or contracted by the company to be manufactured. Companies that, after a reasonable country of origin inquiry determine or have reason to believe that its “conflict minerals” may have originated in the Democratic Republic of Congo or an adjoining country must describe in a “conflict minerals report” the due diligence measures conducted on the source and chain of custody of those minerals. Such companies must obtain an independent private sector audit of their reports and the report must be publicly disclosed on the company’s website.²⁷

4. Leadership in striving for policy coherence

49. In order to ensure that businesses were facing a comprehensive and coherent incentive structure when investing and operating both at home and abroad, the Government of Norway established an interdepartmental group to promote the implementation of the Guiding Principles in the country. As part of its efforts to promote the Principles in the context of extractive industries, in September 2012, the Government of Norway and the Working group on Indigenous Peoples in the Barents Euro-Arctic Council, in cooperation with the Centre for Sami Studies at the University of Tromsø, organized a multi-stakeholder seminar entitled ‘Extractive Industries and Indigenous Peoples’. Three Norwegian ministries were involved in the organization of the event; the Ministry of Foreign Affairs, the Ministry of Trade and Industry, and the Ministry of Government Administration, Reform and Church Affairs (which coordinates indigenous affairs), representing the Government’s efforts to achieve policy coherence.

²⁵ At the time of publication of this report, the final details of these regulations were still in consultation process.

²⁶ See: <http://www.humanrights.gov/wp-content/uploads/2013/02/Burma-Reporting-Requirements.pdf>. Accessed 10 March 2013.

²⁷ A full description of the rule can be found on the SEC’s website, see summary document: Securities and Exchange Commission, Conflict Minerals, Release No. 34-67716, <http://www.sec.gov/rules/final/2012/34-67716.pdf>. Accessed on 10 March 2013.

50. The event sought to foster “consultation and open debate between governments, indigenous peoples and the extractive industries” in light of both the opportunities and threats associated with increased mineral extraction for the indigenous peoples living in the Barents region. The ²⁸ participants included government representatives of Finland, Norway, Sweden and Russia. In some cases national delegations involved more than one agency/department – for example, the Ministry of Foreign Affairs and the agency in charge of licenses of mineral extraction and industry regulation. The event also involved local and national level authorities, which opened opportunities for greater vertical coordination on the issue of business and human rights. The seminar introduced relevant international standards and law with implications on business and human rights in the context of indigenous peoples, with the Guiding Principles as a focal point. Multiple speakers at the seminar aimed to explore how the Guiding Principles could facilitate meaningful discussion and a course of action for State representatives, the extractive industry, and traditional communities. The Guiding Principles were introduced by the Working Group (Mandate holder Alexandra Guáqueta) and the United Nations Special Rapporteur on the Rights of Indigenous Peoples, James Anaya.

5. Multilateral state-based organizations and further review to identify potential gaps

51. In 2011, the OECD reformed its Guidelines for Multinational Enterprises to introduce the UN “Protect, Respect, Remedy” Framework, extend the concept of human rights due diligence to all other areas of business ethics considered in the Guidelines and increase the effectiveness of National Contact Points. In 2011, the OECD also revised its “Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence”.²⁹ In 2012, the process continued and the so-called “Investment Committee” of the OECD set out to investigate the implications on environmental and social issues, including human rights, for financial institutions in relation to the financial products and services they provide. Results will be communicated in 2013.

²⁸ “Extractive industries and indigenous peoples,” University of Tromsø, 10 September 2012, page 1. <http://uit.no/Content/327123/Extractive%20industries%20and%20indigenous%20peoples%20-%20Sep%2010%202012%20-%20Report.pdf> Accessed on 10 March 2013.

²⁹ See OECD Guidelines for Multinational Enterprises, <http://www.oecd.org/daf/inv/mne/>, and Recommendation of the Council on Common Approaches for Official Supported Export Credits and Environmental and Social Due Diligence, <http://www.oecd.org/tad/xcred/commonapproaches.htm>. Accessed on 13 March 2013.

III. Corporate survey

A. Sample

52. The Guiding Principles state that businesses have a responsibility to respect human rights, independently of whether States fulfill their own responsibilities. This responsibility applies to all businesses throughout their operations, regardless of their size, sector or context. To know and show that they respect human rights, businesses must take a number of steps, as specified in the Guiding Principles in “Pillar Two”, on the business responsibility to respect human rights. The Guiding Principles have been widely endorsed by businesses from across regions and sectors. By undertaking this pilot survey of corporate actors, the Working Group sought to identify trends and challenges among companies in implementing the Principles in practice.

53. The Corporate Survey was developed and disseminated in cooperation with the Global Business Initiative on Human Rights, the International Chamber of Commerce, the International Organisation of Employers and the Corporations and Human Rights Project at the University of Denver. The organizations promoted the survey through their networks. Over an eight-week period, a total of 117 individuals from the business sector completed the survey. The online survey was disseminated via email and the networks were asked to send the survey link to their own members. The survey team did not target the survey to specific recipients, in favour of seeking responses from firms from diverse geographies, sizes and sectors. The sample is not random; it is highly likely that respondents were, by definition, familiar with or interested in the business and human rights agenda prior to completing the survey. Even so, the data are telling in terms of the extent to which businesses currently address human rights and the challenges they face. The following paragraphs provide a breakdown of the sample.

54. In terms of industry sector, roughly one in five companies that answered the survey was in the extractive sector (22 per cent); while one in ten came from the utilities, infrastructure and energy sector (10 per cent). Other sectors were also represented: information communication technology (9 per cent), transport and logistics (9 per cent), financial services (9 per cent), manufacturing (9 per cent), retail (5 per cent), food and beverage (4 per cent), agriculture (4 per cent), pharmaceutical (4 per cent), fast moving consumer goods (3 per cent), tourism (1 per cent) and ‘other’ or not specified (11 per cent).

55. The sample is also geographically diverse. Companies headquartered in Europe comprised 53 per cent of the sample and were based in 11 different countries. North American companies represented 15 per cent of the sample and were based in two countries. Sixteen per cent of the sample had their headquarters in Latin America and the Caribbean and were headquartered in six countries. Asia-Pacific represented 6 per cent of the sample across six countries. Five per cent of the sample is headquartered in the Middle East, representing two countries from that region.

56. The respondents represent companies of diverse sizes. Large companies (employing over 100,000 people) made up 21 per cent of the sample while those employing between 30,000 and 100,000 made up 23 per cent. Twenty-five per cent employed between 5,000 and 30,000 individuals. Companies that employed between 1,000 and 5,000 employees represented 12 per cent of the sample; companies with fewer than 1,000 employees represented 16 per cent of the sample.

57. Over half (58 per cent) of the respondents represented privately owned enterprises (ranging from publicly listed to cooperative organizations). Ten per cent were state-owned enterprises while 32 per cent of respondents selected “other.”

B. Structure

58. The pilot survey included a variety of question types such as multiple choice, yes/no answers, rating of a list of options, and open ended questions. The questions were structured into three main sections. Section one included questions regarding the company and respondent. This section was designed to develop a nuanced understanding of the sample. Some of the data from this section were used to describe the sample in the section above. Further information was asked regarding how the respondent's company is organized in terms of their approach to responsible business (see below). Section two sought to understand businesses' current approaches and practices. This section asked participants questions across the following categories: awareness and familiarity with the business and human rights agenda; internal framing and orientation; policy commitment; capacity development; understanding impacts; integrating actions and responses; communicating and reporting; and finally, complaints, grievances and remedy. The third section of the survey sought to uncover information about operational challenges for business. This section asked companies to select from a range of operational challenges described in the survey. Respondents selected those challenges that were most relevant to their business practices at the time of completing the survey. This section was structured around the same headings as Section two, listed above.

C. Findings

59. In line with the purpose of the corporate survey, the information included here outlines general trends of the businesses surveyed and relevant challenges those businesses face today. Regarding businesses' awareness and familiarization of the Business and Human Rights agenda, the survey results illustrated that half of respondents (50 per cent) had engaged with the work of the former UN SRSG on Business and Human Rights between 2005 and 2011. Companies with fewer than 1,000 employees appear to have engaged less, though a few still reported that they did so. Likewise, not all large companies engaged in this process.

60. When asked if respondents envisage future or on-going engagement and support for business and human rights at the United Nations and in other forums, 86 per cent of respondents answered in the affirmative. Nearly all respondents—96 per cent—reported they had heard of the Guiding Principles. It should be noted, however, that these high percentages may be a function of the survey dissemination method (i.e. it is not perhaps surprising that those who completed the survey had heard of the Guiding Principles). Regarding challenges in this area, the most frequently selected response was that there are too many competing responsible business agendas and initiatives.

61. When asked to indicate the drivers behind their company's attention to human rights across ten categories—including CEO leadership, NGO campaigns, customer requirements, competitor practice, investor questioning and employee interest—there was close to zero variation based on company size. The absence of any size, geographic and industry-sector patterns on this and all other issues is worthy of future exploration and dialogue.

62. In terms of company orientation, framing, and training, this section began by asking about the utility of the term "human rights." While one in five (20 per cent) agreed or strongly agreed that the term is difficult for their company to work with, nearly three in four (72 per cent) said they disagree or strongly disagree; 8 per cent were unsure. Four in five respondents said that their company trains employees on social issues and impacts relevant to their function. When asked if their company has organized internal training sessions on human rights tailored to the industry and company, 22 per cent strongly agreed; 45 per cent agreed; 23 per cent disagreed or strongly disagreed; and 10 per cent reported that they were

unsure. Regarding challenges in this area, the most frequently selected responses were first, the challenge of accessing resources and second, the time needed to conduct effective training, and finally, the lack of examples of good practice case studies. Another, less frequent, but still common, response was the lack of templates or public information to guide awareness and training efforts.

63. The survey also asked a series of questions surrounding responsible business structures and governance. When asked, for example, which department(s) takes the lead on addressing their company's social responsibilities and impact, the most common answer—by far—was “corporate responsibility/sustainability.” Though less frequent, other respondents indicated the following departments were tasked with these responsibilities: legal, compliance, audit, procurement, human resources, public affairs and communications. When asked if their company has a committee or group that oversees progress on responsible business, four in five respondents (81 per cent) answered yes and 17 per cent answered no. Of those who answered yes, nine in ten (91 per cent) responded that this committee/group addresses human and labour rights. The survey also sought to understand the extent to which there is cross-departmental dialogue and leadership and whether relevant senior leaders and governance/oversight bodies pay attention to developments in the field of business and human rights. Thirty-one per cent said they strongly agreed, 44 per cent said they agreed; 13 said they disagreed or strongly disagreed; 12 per cent were unsure.

64. In terms of a company's policy commitment, nearly all—96 per cent—reported that in addition to abiding by national laws where they operate, they also engage in corporate philanthropy and volunteering that contributes to society. Over four in five respondents (83 per cent) said that their company has made a public commitment to respect human rights. When asked if their company had signed onto voluntary initiatives addressing respect for human rights, 86 per cent agreed or strongly agreed. Three in four (74 per cent) of respondents stated that they have a statement of policy to respect human rights while over half (57 per cent) of respondents stated that they had a standalone statement setting out their policy commitment to respect human rights.

65. Respondents were also asked to which international standards to their human rights policy refers. The most common responses included: the Universal Declaration of Human Rights, ILO Core Conventions, the UN Global Compact and the UN Guiding Principles and, to a lesser extent, the OECD Guidelines for Multinational Enterprises. Though far less frequent, other standards selected included the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the UN Declaration on the Rights of Indigenous People and UN Conventions concerning specific groups (such as children, persons with disabilities, and migrant workers). Of those whose company has a human rights policy, 93 per cent report that the policy has been communicated within the company and 92 per cent that the policy has been made publicly available. If companies target particular stakeholders, it appears that they share their policy with suppliers and contractors and, to a lesser extent, to other business partners.

66. Regarding challenges for policy commitment, the most frequently selected responses were that, first, it is difficult to communicate the policy in a clear way to all relevant external parties and, second, it is difficult to translate a policy commitment into relevant operational procedures.

67. The next portion of the survey sought to identify how companies understand their impact. When asked to respond to the statement, “My company is aware that we can have negative social impacts on individuals and communities but we do not actively assess these,” two in five (41 per cent) agreed or strongly agreed while half (51 per cent) of respondents disagreed or strongly disagreed; 8 per cent were unsure. When asked if their company engages human rights experts and external stakeholders to understand their

human rights impact, 66 per cent strongly agreed or agreed while 23 per cent disagreed or strongly disagreed; 11 per cent were unsure. When asked if their company pays special attention to the most vulnerable individuals and groups that they can and do impact, 30 per cent strongly agreed, 47 per cent agreed, seven per cent disagreed and 16 per cent were unsure.

68. Regarding challenges in this area, the most frequently selected responses were: 1) “We are unsure how far into the supply chain we need to go in understanding impacts”; 2) “It is a challenge to access credible information”; 3) “There is a lack of proven methodologies and frameworks to help assess impacts”; and 4) “There is a lack of understanding as to how to engage with stakeholders where governments restrict dialogue.”

69. The next section aimed to understand companies’ ability to address impact, track responses and communicate, more broadly, about business and human rights. When asked to respond to the statement, “When an actual or potential human rights impact is identified, we allocate responsibility to the relevant business unit and/or department to resolve the issue and report on progress when necessary”, four in five (82 per cent) agreed or strongly agreed, while only 8 per cent disagreed or strongly disagreed; 10 per cent were unsure. When then asked whether their company tracks progress through developing “qualitative and quantitative indicators, informed by experts and relevant stakeholders,” over half (54 per cent) agreed or strongly agreed, one in four (27 per cent) disagreed or strongly disagreed; 19 per cent were unsure. Nearly seven in ten (67 per cent) of respondents stated that their company has an internal committee/group to track progress in addressing the human rights impacts of their business, especially on high-risk issues. Nearly nine in ten (89 per cent) of respondents said that their company has an annual sustainability or corporate responsibility report that mentions human rights. When asked to respond to the statement, “When my company is faced with human rights challenges we often speak to human rights experts, NGOs and the individuals/groups at risk,” nearly seven in ten (68 per cent) agreed or strongly agreed, 15 per cent disagreed or strongly disagreed; 18 per cent were unsure.

70. Regarding challenges in this area, the most frequently selected responses were: 1) “It is difficult to manage situations where our leverage over business partners is limited, and we find it difficult to build leverage”; 2) “It is difficult to operate in situations where human rights are not part of local law or not applied in practice”; and 3) “There is a lack of understanding of our responsibilities in situations where government institutions are lacking.”

71. Regarding complaints, grievances, and access to remedy nine in ten (91 per cent) respondents expressed that they had feedback mechanisms such as employee hotlines that allow employees to submit issues of concern to management. Nearly four in five (76 per cent) stated they are considering how to address grievances raised by all stakeholders. When asked to respond to the statement, “My company is using grievance data for management systems review and continuous learning,” 21 per cent strongly agreed, 34 per cent agreed, 22 per cent disagreed and 23 per cent were unsure. When asked to respond to the statement, “My company provides for remediation in cases where we cause or contribute to human rights abuses,” 22 per cent strongly agreed, 42 per cent agreed, 9 per cent disagreed or strongly disagreed, and 27 per cent were unsure. Nearly seven in ten respondents (67 per cent) said that they are reviewing their approaches to remedy against the effectiveness criteria set out in the Guiding Principles.

72. Regarding challenges associated with this area, the most frequently selected responses were: 1) “Adapting a grievance mechanism to a cultural context”; 2) “It is difficult to build trust in the mechanism”; 3) “How to move from a complaints hotline to an effective grievance mechanism”; and 4) “Incorporating mechanisms into stakeholder management.”

IV. Concluding observations of the pilot surveys

73. The State and Corporate surveys confirm the global uptake of the Guiding Principles. Response rates, while higher in the Western European and Others Group, spanned from across the world. This global participation in the development of the business and human rights regime was clearly visible during the First UN Forum on Business and Human Rights in December 2012. However, there is still little or no information regarding the efforts in many countries, including strategic emerging markets.

74. The State survey indicates that governments are still in the initial phase of the implementation of the Guiding Principles and the process to get started can take several months. Such processes include information meetings with different government agencies and multi-stakeholder consultations with the participation of business and civil society to identify responsibilities, priorities and needs. It is possible that the process of identifying the key entry points for the Guiding Principles into existing due diligence requirements for businesses (for example, environmental impact assessments and licenses, national and subnational level procurement, financial regulation, corporate law, trade and investment policies, among others) could mark the next phase. So far, some States have chosen to focus in this phase on transparency measures in the form of reporting requirements for a specific set of companies or situations. Understanding how reporting requirements work and how they can shape corporate conduct to introduce both the prevention and remedy elements of the Guiding Principles should be a focus for further research.

75. Some information on expected implementation steps by States was absent in the replies. In general, States did not provide information on their efforts to ensure policy coherence in multilateral institutions (for example the World Bank), international groups (for example the G20) or regional organizations (with the exception of the OECD and the EU).

76. The survey results suggest that companies *are* considering and actively working to address human rights with reference to international human rights standards and the Guiding Principles. In the short time span of 18 months after the endorsement of the Guiding Principles, there appears to be a strong trend in awareness and engagement by business with the Principles and dialogue at the international level, including the United Nations. According to survey results, there is effort being put into human rights policy commitments; finding the right tools to identify, assess and address adverse human rights impacts; communicating with a range of stakeholders; and updating complaints offices. But a deepening and more nuanced notion of business action may be necessary, as well as tools to measure the degree to which the Guiding Principles are effectively being implemented so that companies know where they stand. One of the most striking patterns of the survey results is that when asked general questions about the components of the *responsibility to respect* (policy commitment, addressing impacts, communication and reporting) a high number of companies (often around 80 per cent and above) were confident that their company had some form of practice in place. However, when respondents were asked questions pertaining to how mature or embedded practices were, the number of “unsure” responses spiked considerably.