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Summary of discussions of the Forum on Business and Human Rights, prepared by the Chair, Mo Ibrahim

Summary

The present document, prepared in accordance with Human Rights Council resolutions 17/4 and 26/22, provides a summary of the discussions of the third annual Forum on Business and Human Rights, held from 1 to 3 December 2014. It contains a brief overview of the structure of the event and official proceedings, and should be read as an executive summary together with the session concept notes, statements and written submissions received and session web recordings that are available on the Forum website.

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I. Introduction

1. In its resolution 17/4, the Human Rights Council created an annual Forum on Business and Human Rights to be guided by the Working Group on the issue of human rights and transnational corporations and other business enterprises. The Forum was established to discuss trends and challenges in the implementation of the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex)[1]; 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 identify good practices.

2. The third annual Forum was held in Geneva from 1 to 3 December 2014.

3. As per resolution 17/4, the Chair of the Forum, Mo Ibrahim, was appointed by the President of the Human Rights Council and was responsible for the preparation of the present summary report, to be made available to the Working Group and participants of the Forum.

4. In preparation for the Forum, the Working Group invited stakeholders to propose topics for the parallel sessions of the Forum. More than 70 submissions were received. The Forum programme included 39 parallel sessions organized by external stakeholders and 20 plenary and parallel sessions led by the United Nations. Several of the parallel sessions facilitated by external organizations were organized in collaboration with the Working Group.

5. The expanded scope and scale of the Forum was largely made possible by a contribution from the Government of Norway and the substantive and organizational input from a large number of interested participants from all stakeholder groups.

II. Participation

6. The Forum's unique multi-stakeholder nature is derived from resolution 17/4, in which the Human Rights Council stipulated that the Forum shall be open to relevant stakeholders, sectors and disciplines, including States, United Nations mechanisms and entities, intergovernmental organizations, regional organizations and mechanisms, national human rights institutions, business enterprises and associations, labour unions, academics and experts, representatives of indigenous peoples, non-governmental organizations (NGOs) and affected stakeholders.

7. Participation by all stakeholder groups and the number of nationalities represented was higher than in previous years. It is estimated that some 2,000 people from around 130 countries attended.[2] The breakdown of registrants is referenced in the table below. There was equal representation of women and men.

[1] See also Office of the United Nations High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights: Implementing the United Nations " Protect, Respect and Remedy" Framework* (New York and Geneva, 2011).

[2] The number of people pre-registered for the Forum was 1,954. As several Geneva-based Government delegations, non-governmental organizations and international institutions already had access to the United Nations premises, they did not register. Not all the people who registered attended, therefore the exact attendance cannot be verified.

Registration by stakeholder category

Academic	185
Business enterprise	168
Business/Industry association	67
Civil society organization (ECOSOC accredited)	478
Civil society organization (non-ECOSOC)	370
Consultancy	68
Law firm	38
Multi-stakeholder initiative	30
National human rights institution	53
Professional association	15
State	265
Trade union	16
United Nations/Intergovernmental organization	94
Other	107

III. Programme outline

8. The theme of the 2014 Forum was "Advancing business and human rights globally: alignment, adherence and accountability". Plenary sessions focused on leadership perspectives on the business and human rights agenda in the context of current global trends, and on how the Guiding Principles could reach scale and contribute to human rights and dignity for all in the global economy. The thematic tracks examined key strategic issues such as: the role of public policy and national action plans; progress made and challenges faced by companies in integrating the corporate responsibility to respect human rights, both in policy and in practice; enhancing accountability and access to effective remedy for victims of business-related human rights abuse; integrating the Guiding Principles in global governance structures; and good practice models for meaningful stakeholder engagement. In addition, a number of parallel sessions addressed a range of key trends and issues relating to specific rights, groups, sectors and operational contexts.

IV. Broad reflections on the Forum proceedings

9. Across the Forum panels, some general observations and findings emerged:

- Governments are beginning to examine their laws, policies and practices to identify gaps and formulate action plans to close them. They are also considering novel regulatory means of embedding human rights into corporate practice, including through the levers they have on procurement, non-financial reporting and financial regulations;
- Remedies remain elusive and a concerted effort must be made to ensure access to justice for those who have been negatively impacted by corporations;
- The dialogue is becoming more substantive. The discussions were generally constructive, focused on the two core issues of how to prevent, and how to create accountability for adverse impacts of corporate activity;

- Business representatives are becoming more engaged in discussions about experiences, challenges and lessons learned from efforts to implement the Guiding Principles. Enhanced business engagement was also evidenced by the participation of the chief executive officers (CEOs) of some global companies. At the same time there was general agreement about the need to encourage broader private-sector participation, including with regard to engaging small and medium enterprises (SMEs);
- The decision by the Human Rights Council to establish an intergovernmental working group to develop a legally binding instrument on human rights and transnational corporations should not impede efforts to implement the Guiding Principles. Rather, the process to develop a new international instrument should build on, not detract from, the Guiding Principles;
- Above all, a recurrent recommendation was the need to establish a regular and systematic process for measuring and reporting on progress made by States and business enterprises in implementing the Guiding Principles.

V. Opening plenary

A. Welcome remarks

10. The opening plenary was presided by the Chair of the Forum, Mo Ibrahim. Welcome remarks were delivered by the President of the Human Rights Council, Baudelaire Ndong Ella, the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, and the Chair of the Working Group, Michael Addo.

11. Speakers highlighted the global scale of the Forum and the diversity of stakeholders. Acknowledging that challenges in the area of business and human rights could not be solved by a single stakeholder category alone, they emphasized the importance of multi-stakeholder dialogue and encouraged participants to discuss innovative actions and practical solutions.

12. The President of the Human Rights Council stressed the responsibilities of both States and businesses to implement the Guiding Principles.

13. The Chair of the Forum underlined the important and complementary roles that different stakeholders could play to promote human rights in business. He emphasized the need for constructive dialogue between equals, with a common objective built on mutual interests. Speaking from personal experience, he highlighted the potential of business to support and uplift society and the key role of civil society in driving change. Urging a focus on delivery, he called for an independent and credible monitoring process to measure and report on progress in implementing the Guiding Principles.

14. The High Commissioner for Human Rights paid special tribute to human rights defenders and their role in raising awareness about the responsibility of business to respect human rights. While recognizing the potential of business to generate economic opportunities and services important for the enjoyment of human rights, he also drew attention to their potentially serious negative impacts and called for greater justice and accountability. He reminded participants of the Bhopal tragedy, commemorating its 30th anniversary.

15. The Chair of the Working Group situated the Forum within the context of a wider business and human rights movement to develop the building blocks of an international regime fit for purpose. In a world beset by global governance challenges, he drew attention

to the need to fill the legal gaps that continued to prevent accountability and to further operationalize the Guiding Principles in specific sectors.

B. Keynote statements and high-level panel: Leadership views on business and human rights: addressing key global challenges – what next and how?

16. The session moderator was Marc Gunther (Guardian Sustainable Business). Keynote speakers were Paul Polman (CEO, Unilever); Sharan Burrow (General Secretary, International Trade Union Confederation); Hina Jilani (Advocate, Supreme Court of Pakistan); and Paul Bulcke (CEO, Nestlé). Panellists were Bob Collymore (CEO, Safaricom, Kenya); Alejandra Ancheita (Executive Director, ProDESC); Idar Kreutzer (CEO, Finance Norway); and Kees van Baar (Human Rights Ambassador, Netherlands).

17. The aim of the session was to address strategic considerations and leadership challenges for global implementation of the Guiding Principles and greater integration of respect for human rights in business.

18. In his opening statement, Paul Polman expounded Unilever's Sustainable Living Plan, which includes an explicit commitment to implement the Guiding Principles. He expressed his conviction that businesses had responsibilities to go beyond their legal duty to do no harm, and highlighted the power of the Internet and changing youth consumption patterns in pressuring companies to improve their behaviour.

19. Sharan Burrow highlighted the precarious situation of workers in the informal sector and of the more than 30 million workers worldwide who are enslaved and exploited by private entities. She posited the Guiding Principles as the most significant instrument addressing corporate responsibility for human rights and clarified that businesses could not subcontract their obligations in that regard.

20. Panellists highlighted the clarity provided by the Guiding Principles with respect to the human rights responsibility of companies. They encouraged States to take an active role in the development of national action plans and underlined the importance of robust national legal systems for accessing justice. While acknowledging the significance of large transnational corporations participating in the Forum, as they exercise leverage over global supply chains, panellists also called for the participation of more SMEs and stressed the need to defend the rights of workers everywhere.

21. In her closing statement, Hina Jilani focused on the fundamental obligation of States to protect citizens from exploitation and deprivation. She highlighted the importance of legal frameworks to ensure civic participation; empowerment of women in the economic sphere; access to information; and the need for a strong and independent judiciary to ensure access to effective remedies.

22. In his closing statement, Paul Bulcke emphasized the need for business to integrate human rights in daily activities and corporate business plans, as well as to exercise comprehensive human rights due diligence. He highlighted the importance of building trust among all stakeholders by maintaining transparency and demonstrating effective implementation of policies and procedures.

C. High-level discussion: Global outlook for business and human rights: key themes, drivers, trends, challenges

23. The session moderator was Georg Kell (Executive Director, United Nations Global Compact). Introductory remarks were provided by Working Group member, Margaret

Jungk, followed by a survey presentation by Monica Woodley (Editorial Director, Economist Intelligence Unit). Panellists were Jayati Ghosh (Professor of Economics, Jawaharlal Nehru University); Morten Høglund (State Secretary, Ministry of Foreign Affairs, Norway); Rajiv Joshi (Managing Director, The B Team); Lisa Misol (Senior Advisor on Business and Human Rights, Human Rights Watch); Edgar Tung (Managing Director, Group Human Resources, Organization Development and Communications, Esquel Group); and Brent Wilton (Secretary General, International Organisation of Employers).

24. Participants reflected on data from current surveys and situated said data in the broader context of macro-trends and evolving expectations on business. Interim survey findings on corporate respect for human rights were shared by the Economist Intelligent Unit. They revealed that 85 per cent of respondents believed that business had a role to play in supporting human rights, but 56 per cent of companies surveyed lacked specific policies. Panellists discussed drivers and challenges in that area and explored how States and business were meeting their respective duties and responsibilities, as well as next steps.

25. All noted that there has been significant progress since the adoption of the Guiding Principles; speakers pointed to the opportunity to build on that positive momentum and develop linkages with other relevant agendas, such as negotiations on climate change and the post-2015 development agenda. While recognizing the potential for enlightened business to catalyze transformation on a global scale, speakers also stressed the need for changes at regional and national levels and support for SMEs. They also lamented the reduction in civil society space and expressed concern at the attacks on human rights defenders. Panellists strongly emphasized the need for rule of law, accountability and access to justice. Alluding to the treaty process, they underlined the importance of addressing all companies, not only transnational corporations.

D. Spotlight on effective strategies by affected stakeholders and advocates

26. This special topic was introduced by Working Group member, Pavel Sulyandziga; it offered an opportunity to hear the voices of victims and human rights defenders directly. N. D. Jayaprakash (Coalition for Supporting the Cause of the Bhopal Gas Victims) recalled the 1984 Bhopal disaster and raised three key issues: transnational corporations should apply the same standards at home and abroad; victims need to be provided with medical records to enable further treatment and compensation; and remediation should be made possible through the United Nations. Bettina Cruz, speaking on behalf of an indigenous peoples caucus, stressed the importance of States fulfilling their duty to protect, including through the development of national action plans to implement the Guiding Principles, with the participation of indigenous peoples. She noted the increase in criminalization of persons defending indigenous people; the need for companies to exercise adequate human rights due diligence; concerns regarding access to remedy, including with regard to sexual violence and excessive force used against indigenous people; and the importance of supporting opportunities for the participation of indigenous peoples in future Forums.

VI. Thematic track I: Strengthening public policy on business and human rights through national action plans and other measures

A. Presentation of guidance on national action plans to implement the Guiding Principles and stakeholder perspectives

27. Scaling up State action on business and human rights is a strategic objective that was in focus throughout the Forum. On the first day of the Forum, the Working Group presented its guidance document on national action plans to implement the Guiding Principles. The guidance was based on broad consultations during 2014, including engagement with the International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR), co-organizers of the session on national action plans. The Working Group set out four criteria for effective national action plans: they should be founded on the Guiding Principles; context-specific and address the country's actual and potential adverse corporate-related human rights impacts; developed in inclusive and transparent processes; and regularly reviewed and updated.

28. Representatives of the International Labour Organization (ILO), the Organization for Economic Cooperation and Development (OECD) and the Working Group on Discrimination against Women in Law and in Practice provided expert comments on the guidance. They highlighted that national action plans on business and human rights should be aligned with the core international labour standards; mainstream a gender perspective in all phases; and be based on inclusive multi-stakeholder involvement.

29. During the session, stakeholders, including from business associations, the investment community, national human rights institutions and civil society, called on States to develop national action plans. Government perspectives were presented by Chile, Colombia and Germany.

B. The role of States in creating an accountable marketplace: Addressing key policy areas

30. The session was moderated by John Morrison (Institute for Human Rights and Business). Panellists were Edgardo Riveros (Deputy Minister of Foreign Affairs, Chile); Karen J. Hanrahan (Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor, Department of State, United States of America); Sun Lihui (China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters); Vani Sathisan (International Commission of Jurists, Myanmar); Viviane Schiavi (International Chamber of Commerce); and Alexandra Guáqueta, Working Group member.

31. The moderator opened the session by questioning the often held position that companies want little regulation, noting that they rather preferred clarity and predictability with regard to rules, which could be made more coherent through national action plans.

32. Two important developments in 2014 were reflected on: the decisions by the governments of Chile and of the United States to develop national action plans on business and human rights, and guidelines from China for mining companies operating abroad. The representative of the International Commission of Jurists stressed that while foreign investment was generally welcome, it must not be at the expense of adverse human rights impacts, and referred to issues such as corruption in security forces and the judiciary as obstacles to effective implementation of the State duty to protect. She stressed that civil society must be engaged in real dialogue and that investors needed to be more reactive and

responsible. The representative of the International Chamber of Commerce welcomed the progress made, as witnessed by national action plans on business and human rights in some countries, and stressed that companies wanted that development as such plans could strengthen policy coherence and should be developed through open and inclusive processes. Ms. Guáqueta pointed out that implementation of the Guiding Principles should involve ministries in charge of trade, agriculture, mining as well as others in charge of substantive economic policy areas, and that coordination among governments was critical.

33. One question raised during the open discussion was how to tackle the perception that human rights standards were bad for economies and scared away investors. It was reiterated that national action plans were an important way forward and that governments should send a strong signal to business about the expectation that they respect human rights through measures such as Government procurement processes, use of credit for investments and trade, and support to NGOs at different levels. Other ideas included measures to strengthen coordination between States and developing indicators for measuring progress. The Permanent Representative of South Africa emphasized the constant challenge of ensuring consistency across boundaries with regard to corporate compliance. He argued that while States continued to work on national action plans to implement the Guiding Principles, it was necessary to pursue an international legal convention to ensure a common global standard, and that pursuing those two avenues should not be seen as mutually exclusive.

C. Scaling up action on business and human rights: the role of international and regional organizations

34. The session was moderated by Richard Howitt (Member of the European Parliament). Panellists were Norma Colledani (Inter-American Commission on Human Rights); Salah Hammad (African Union Commission); Tamislav Ivančîć (European Commission); Roel Nieuwenkamp (OECD Working Party on Responsible Business Conduct); and Alexandra Guáqueta, Working Group member.

35. The moderator began by noting that the Guiding Principles were part of a movement of emerging alignment and convergence around credible frameworks aimed at regulating business and human rights. Ms. Guáqueta pointed out the potential of regional organizations and proposed that they seek commitment from their member States to develop national action plans on business and human rights; exercise leadership to put the Guiding Principles on the agendas of regional financial institutions; and that regional human rights mechanisms should familiarize themselves with the Guiding Principles.

36. Participants were reminded that the OECD Guidelines for Multinational Enterprises (2011) provided de facto grievance and promotion mechanisms for the implementation of the second pillar of the United Nations Framework through national contact points. While further progress is necessary, the OECD system has demonstrated value in concrete situations involving human and labour rights breaches as well as clarifying due diligence requirements in the context of conflict minerals trade and in the textile and financial sectors. With regard to the Inter-American system, the June 2014 resolution by the Organization of American States to promote dialogue in the context of business and human rights and a special session to be held on business and human rights in January 2015 were highlighted. The European Commission promotes the Guiding Principles through its policy on corporate social responsibility (CSR), which is aligned with the United Nations Framework in terms of its understanding of the corporate responsibility of businesses to prevent and address adverse impacts of their activities and focus on the “smart mix” of voluntary and regulatory action. Regarding regulatory developments, the integration of human rights in public procurement and non-financial reporting requirements as well as the proposed framework for conflict minerals were highlighted. So far, eight European Union

member States have developed national action plans on business and human rights or corporate social responsibility, with more expected in 2015. Regarding developments in Africa, the recent Regional Forum on Business and Human Rights, organized jointly by the Working Group, OHCHR, the United Nations Economic Commission for Africa and the African Union Commission, was featured together with a vision to make the Guiding Principles part of the African Governance Architecture created in 2011. That governance framework aims to deal with human rights as a cross-cutting issue and will support member States with national action plans, including with regard to advancing implementation of the Guiding Principles.

37. Further discussion highlighted the work of other regional organizations, including the Council of Europe Committee of Ministers draft recommendation to member States on human rights and business,[3] which is aimed at supporting member States in implementing the Guiding Principles; the recent study by the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights on CSR and human rights and further plans; and the work of the Organization for Security and Co-operation in Europe (OSCE) on trafficking and forced labour. Other participants flagged that the process of developing a national action plan could be quite taxing on States and civil society and suggested that regional mechanisms could play a role in building capacity to support implementation and in harmonizing regional approaches to allow for future peer reviews of States. The African Peer Review Mechanism was highlighted as a platform for sharing good practices among States.

VII. Thematic track II: Respect in practice: progress and challenges in implementing the corporate responsibility to respect

38. The session was organized by the Working Group, in collaboration with the Global Business Initiative on Human Rights (GBI) and the Business and Human Rights Resource Centre (BHRRC). It consisted of two panels: “Embedding the Guiding Principles in decision-making and processes” and “Applying the Guiding Principles in local contexts”.

39. Margaret Jungk, Working Group member, introduced the session. She highlighted that embedding corporate responsibility to respect was not a check-box exercise and that “hard” corporate systems in combination with a “soft” culture with regard to corporate human rights structures could contribute to the complexity of “good” and ethical operating environments. She welcomed the innovative approach adopted by companies and civil society organizations in presenting their relationships and shared efforts in relation to a particular set of human rights impacts in specific situations.

A. Embedding the Guiding Principles in decision-making and processes

40. The first panel was moderated by Mark Hodge (GBI). Panellists were Shane Boladeras (BG Group); Kasumi Blessing (Novo Nordisk); Ron Popper (ABB); and Julie Vallat and Peter Herbel (Total S.A). Speakers shared the approaches of their

[3] See Council of Europe, Steering Committee for Human Rights, Drafting Group on Human Rights, Report of 3rd meeting held in Strasbourg, France, from 24 to 26 September 2014 (CDDH-CORP(2014)R3, appendix III) available from http://www.coe.int/t/dghl/standardsetting/hrpolicy/Other_Committees/HR_and_Business/Documents/CDDH-CORP(2014)R3_en.pdf

respective companies with regard to embedding respect for human rights in relevant processes and practice. They addressed different aspects of implementation, more specifically: senior leadership engagement in policy and integration; corporate-wide human rights risk analysis; capacity-building and training programmes; and effectiveness criteria for grievance mechanisms. Key lessons and observations from the panel discussion included the following:

- Senior leadership — including CEO engagement — makes a substantial difference to how mature a company's approach to human rights can be. That is not limited to setting policy, but extends to establishing the correct systems and culture to embed respect for human rights as well as strengthening the leverage in engagement with third parties;
- The Guiding Principles require companies to look beyond a narrow set of rights and operations, and there is some level of convergence among the management tools that practitioners are using, even across industries;
- Training and capacity-building are not "soft". Good programmes include delivering very clear messages and expectations, and creating know-how that can be very technical. Furthermore, training needs to be supplemented by key decision-making processes that include human rights queries or requirements;
- When it comes to grievance mechanisms, a major challenge is how to ensure internal preparedness to address grievances, complaints and feedback in a timely and comprehensive manner, including addressing allocations of budget and time;
- If the road to establishing a coherent and holistic set of policies, systems and capabilities is complex and too time-consuming for large transnational corporations, then perhaps there is need to be reasonable with expectations when requirements are established for suppliers, customers and business partners.

41. A final, cross-cutting observation was that a single company must, at some point, address all the aspects of corporate responsibility. Therefore, implementing the corporate respect for human rights consistent with the Guiding Principles can be a highly complex organizational change process. At the same time, companies are showing that it is the "art of the possible".

B. Applying the Guiding Principles in local contexts

42. The second panel was moderated by Phil Bloomer (BHRRC). Panellists were Felix Poza (Inditex); Isidor Boix (IndustriALL); Simone Rocha Pinto (Vale S.A.); Nisha Varia (Human Rights Watch); Yann Wyss (Nestlé); Nick Weatherill (International Cocoa Initiative (ICI)); Irit Tamir (Oxfam); and Rebecca MacKinnon (Ranking Digital Rights). The representatives of Vale S.A. and Human Rights Watch spoke about working with communities in Mozambique on resettlement issues; the representatives of Inditex and IndustriALL elaborated on the importance of their joint Global Framework Agreement for core labour rights in Turkey; and the representatives of Nestlé, ICI and Oxfam spoke about the value of working together to combat child labour and support women's rights in West Africa. Key lessons and observations from the panel discussion included the following:

- Collaboration between companies and civil society to achieve better human rights outcomes using the Guiding Principles as the reference point is encouraging. Far more collaboration is needed and it is important not to ignore that as we track progress, challenges and trends at the macro or global level;
- Panellists and many participants recognized that mature relationships involve some level of disagreement and debate about local context, drivers, challenges and best

solutions. All parties must operate with integrity and transparency and interventions must be based on facts or evidence;

- Participants welcomed the approach of the panel and considered two items in particular as being important discussion elements at annual Forums: (1) focusing on very specific cases and contexts is key to beginning to understand if and how the Guiding Principles make a difference to rights-holders; (2) bringing together companies and civil society actors which have been involved in a case and have a good grasp of the contexts and facts thereof.

43. The final part of the session featured reflections by Government representatives from the United Kingdom of Great Britain and Northern Ireland and Colombia. They stressed that governments had an important role to play in encouraging business-civil society partnerships through legislation, advice and multi-stakeholder forums, as well as through their role as purchaser and contractor.

VIII. Thematic track III: Access to remedy discussions

44. A key topic of the Forum and one that the Human Rights Council had specifically invited the Working Group to include, in its resolution 26/22, was enhancing access to effective remedy in cases of business involvement in human rights abuse. The panels were organized by OHCHR, in collaboration with the Working Group. Those which focused on judicial remedy were designed to feed into the OHCHR initiative to enhance accountability and access to judicial remedy in cases of business involvement in serious human rights abuses, in which the Working Group is collaborating.

A. Practical and legal challenges associated with corporate liability for involvement in gross human rights abuses

45. The session was moderated by Anita Ramasastry (University of Washington School of Law). Legal expert, Jennifer Zerk, provided introductory remarks in her capacity as consultant for the above-mentioned OHCHR initiative. Panellists were Alberto d'Alotto (Permanent Representative of Argentina to the United Nations in Geneva); Jean-Philippe Kot (Avocats sans Frontières); Dickay Kunda (Kilwa community, Democratic Republic of the Congo); Matthias Thorns (International Organisation of Employers); and Michael Addo, Working Group member.

46. Ms. Zerk shared insights from her study, which was commissioned by OHCHR, on how domestic judicial systems respond to alleged corporate involvement in gross human rights abuses. The study found that domestic systems were not currently succeeding well in holding corporations to account. Based on the study, OHCHR launched a programme to address identified challenges, such as clarifying the tests for legal liability in different jurisdictions; roles and responsibilities of interested States; practices in relation to funding legal claims and civil and criminal law remedies; as well as further research on challenges experienced by domestic prosecutors in trying human rights cases involving corporations. The process will be concluded in 2016 and will provide recommendations, guidance and good practices to States.

47. Panel presentations provided practical perspectives from diverse angles: addressing alleged corporate complicity in human rights violations during the dictatorship in Argentina in the 1960s; challenges faced by the community affected by the mining incident in Kilwa, Democratic Republic of the Congo, to secure legal remedies, at home and abroad, against the company alleged to have supported the military in carrying out the violations; civil society perspective, which highlighted the need for adequate victim protection in cases

involving gross human rights abuses and the practical challenges posed by standards of proof in criminal cases; and the call from international employers to strengthen access to judicial remedy and explore ways to ensure that governments take appropriate action, including by increasing scrutiny of government performance through the universal periodic review; using donor funds to host States creatively; improving access to remedy in host countries, in cases involving transnational corporations; and adopting measures to reduce informality, which is a major barrier in access to any kind of formal process, including having legal standing. Mr. Addo pointed out that the lack of a common legal culture was another important barrier to achieving access to effective judicial remedies.

48. Further discussion suggested that accountability for business-related crimes could be improved by tackling the challenge of reducing informality in the economy, and that there was need to strengthen local remedies in States where human rights abuses are carried out. One constant message was that the Guiding Principles needed to be implemented in a more effective manner.

B. Identifying options for international coordination and regulation to overcome challenges in access to remedy

49. This session was moderated by Jane Connors (Research and Development Division, OHCHR). Panellists were Gabriela Quijano (Amnesty International); Ariel Meyerstein (United States Council for International Business); Simon Minks (Senior Prosecutor, Netherlands); Ian Binnie (Counsel, Lenczner Slaght and former Justice, Supreme Court of Canada); and Michael Addo, Working Group member.

50. The moderator underscored that the Guiding Principles required States to systematically reduce legal and practical barriers to access to remedy. She highlighted issues relating to the practical challenges posed by transnational business and challenges faced by victims in obtaining access to remedy through domestic courts, including the division of responsibility between home and host States in ensuring access to remedy and potential models of international cooperation and regulation that could be emulated in that space.

51. Panellists offered ideas for strengthening cooperation between home and host States. The representative of Amnesty International referred to research which found that lack of cooperation between home and host States was one of the main obstacles for securing effective remedy in human rights abuse involving transnational corporations. Positive steps such as establishing regulatory cooperation as an avenue to increase available remedy options and strengthening enforcement relating to the duty of care or diligence for parent companies were suggested. Exploring non-conventional strategies was also proposed as a way forward, including partnerships and work with civil society to obtain representation for communities and to gather evidence for litigation; cross-border technological solutions; and training and embedding of prosecutors in foreign jurisdictions. It was highlighted that, before taking the decision to prosecute, it was important to be aware that it would take a very long time and significant expense to come to a legal result. Given the imbalance in resources between private sector actors and victims (and prosecutorial bodies), it was suggested that sometimes it might be worthwhile to come to an agreement, including compensation for victims and a public communication. It was stressed that international cooperation was essential to gathering evidence and that it was important to invest in bilateral relations in order to secure such cooperation. Participants observed that disclosure on human rights risks and impacts was not yet standardized by companies and financial markets and that recent developments in the area of anti-corruption could be replicated in the area of business and human rights, including the need for a culture shift so that it becomes unacceptable for the vulnerable to bear the costs of human rights impacts. It was

flagged that governments responded to political pressure and that some were moving towards holding companies within their jurisdiction accountable and creating reporting mechanisms and conditions for financial and other support. Mr. Addo stressed the importance of government policy coherence.

52. The interactive dialogue addressed issues such as the challenge of corrupt judiciaries worldwide; the possibility of requiring tort insurance and tying this to access to remedy for victims; forthcoming recommendations by the Council of Europe on implementation of the Guiding Principles; and the lack of power by State-based grievance mechanisms, such as the OECD national contact points and other agencies in charge of overseeing standards for responsible business conduct.

C. Approaches for overcoming financial barriers to accessing judicial remedy mechanisms

53. The session moderator was Gwynne Skinner (Willamette University College of Law), and the panel consisted of Richard Meeran (Leigh Day); Katherine McDonnell (EarthRights International); Krishnendu Mukherjee (Doughty Street Chambers and public interest lawyer, Goa, India); and Alexandra Guáqueta, Working Group member.

54. The moderator began by highlighting the extensive research on how lack of access to funding might impede access to counsel and the ability of victims to bring claims. The panel included public interest litigators who discussed their experience with the funding of cases against corporations for involvement in human rights abuses, as well as ideas for new ways of funding claims. The importance of bringing claims in domestic or host State courts in order to develop jurisprudence was emphasized and it was pointed out that challenges included lack of ability to bring representative claims in the Indian context. Potential avenues that could help overcome lack of funding included working with NGOs that could provide funding for litigation; community-based funding, where members of an affected community would “pay-what-you-can” into a common fund for a case; or establishing a trust fund, with the supervision of the State, from which filing costs would be obtained. It was underscored that bringing those types of claims was very costly because the cases were complex, sometimes fought in foreign courts, therefore requiring cross-border evidence gathering, and public funding was typically insufficient, all of which impeded the ability of public interest firms and smaller law firms to take on such cases. In the United Kingdom context, some current developments were resulting in further financial obstacles for victims. Potential solutions included the possibility of introducing opt-out class action suits, as already existed in some countries, and reversing the burden of proof in cases involving parent company liability. One practical challenge with respect to supporting victims was that victims might not be able to cover their living expenses while litigation was ongoing. In some cases, victims might also need expensive resettlement or other witness protection measures, but funding options for those types of interventions were currently limited. Law firms that worked on a contingency fee basis and ran a “cooperating attorneys” programme, whereby lawyers could work on a particular issue in a case together with NGOs, could reduce costs for the NGO. The discussions brought out ideas for innovative funding methods, including social impact financing, and borrowing from developments in the environmental field, where it is now common practice to require high-impact industries to post a “bond” that may be used to fund clean-up costs, and establishing tribunals to hear human rights cases.

D. Operational-level grievance mechanisms in high-risk contexts: Dilemmas and emerging practice

55. This session was moderated by Alexandra Guáqueta, Working Group member. The panellists were Gina Barbieri (Office of the Compliance Advisor/Ombudsman (CAO), International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA)); Rutger Goethart (Heineken International B.V.); Anupama Mohan (Statoil and representing IPIECA, the global oil and gas industry association for environmental and social issues); Komala Ramachandra (Accountability Counsel); and Evans Sichalwe (Legal and Human Rights Centre, United Republic of Tanzania).

56. The discussion sought to examine how to apply principles for operational-level mechanisms in practice in some of the most challenging environments and advance understanding of good practice in line with the criteria set out in the Guiding Principles. The moderator stressed that the basis of effective mechanisms involved both process and outcomes working in tandem. She pointed to the challenging environments in which many such mechanisms needed to be implemented, including areas characterized by weak governance structures, instability and geographic isolation.

57. A common challenge observed by the CAO in relation to IFC-funded projects concerned the lack of trust in project-level grievances and lack of consultation and exclusion of community participation. Key questions included how to address power imbalances between the community and the corporate entity; ways to improve monitoring and evaluation through the use of appropriate indicators and tools to determine impacts; and challenges relating to the use of alternative dispute resolution and the need for escalation procedures. Lessons from an IPIECA project, which piloted the setting up of community-level grievance mechanisms, included the observations that grievance mechanisms need to be part of the standard due diligence programme of companies; the earlier issues are resolved, the more effective they are in preventing grievances from escalating; and the most serious matters belong in courts. Other company experiences indicated that other effectiveness factors for grievance procedures included whether they were seen as objective, confidential, implied non-retaliation, and were generally examined and closed within three months. Challenges included how to ensure effective access and legitimacy as well as transparency in reporting externally without compromising company confidentiality and/or jeopardizing competitive business strategies. From a civil society perspective, a number of challenges were highlighted: common lack of awareness of grievance options; fear of retaliation in bringing a grievance and fear that raising complaints may jeopardize rehabilitation measures; lack of empowerment of company welfare officers on the ground; power imbalances within communities, with implications for the effectiveness and legitimacy of resolution outcomes; and the wider context of collusion between corporate and State actors. Concrete experience from efforts to seek remedy for alleged violations at the North Mara Mine in Tanzania also revealed a power imbalance between companies and complainants.

58. Further discussion addressed questions such as necessary elements regarding restitution, rehabilitation, guarantees of non-repetition and access to information. Participants said that it was critical to ensure a “level playing field” and build capacity of communities; that governments had a key role in providing conducive regulatory contexts and preventing abuse in the first place; that culturally appropriate outcomes should be ensured and community acceptance of an outcome based on the reasoning that “it is better than nothing” should be avoided; and that non-judicial mechanisms implied levels of protection which were incumbent on the company. With regard to the question of how to ensure trust in grievance mechanisms, a spectrum of options was mentioned: learning mechanisms; support for alternative processes; data protection; no assumptions of a “one-

size-fits-all" approach; and the benefits of approaching grievance resolution from the local community level.

IX. Thematic track IV: Embedding the Guiding Principles in global governance

A. High-level discussion: Strengthening the links between the global economic architecture and the business and human rights agenda

59. The session moderator was Mike Posner, Professor of Business and Society, New York University Stern School of Business. Pascal Lamy (Honorary President, Notre Europe, Jacques Delors Institute and former Director-General of the World Trade Organization (WTO)) and Silvano Maria Tomasi (Catholic Archbishop and Permanent Observer of the Holy See to the United Nations in Geneva) delivered opening remarks. Panellists were Jorge Abrahao (President, Ethos Institute for Business and Social Responsibility); Osvaldo L. Gratacos (Vice-President, Compliance Advisor/Ombudsman (CAO) for IFC and MIGA, World Bank Group); Irene Khan (Director-General, International Development Law Organization); Stavros Lambrinidis (European Union Special Representative for Human Rights); Sandra Polaski (Deputy Director-General for Policy, ILO); and Jo Swinson (Minister for Employment Relations and Consumer Affairs, United Kingdom).

60. In his opening statement, Mr. Lamy identified some of the limits to the current "clustered" model of international law when addressing issues of human rights and business. He expounded the benefits of exploring interconnections between trade, development, environment and human rights, and advocated a unilateral, and not just a multilateral, approach. He highlighted shortcomings of the current Westphalian system which accords primacy to State sovereignty and called for greater civil society engagement and a coalition-based approach.

61. Mr. Tomasi called for a more ethical approach to business that transcends profit in the service of human dignity. He reflected on the idea of business being crucial to sustainability in terms of providing goods and services, which at the same time necessitated that business act with social responsibility, and more broadly for the common good.

62. The panellists discussed, inter alia, the issue of weak home governments, unwilling and/or unable to protect their citizens from corporate human rights abuses, and noted that the problem was compounded when combined with powerful corporate investment opportunities. Notwithstanding the existing obligations on States, participants argued for enforceable industry standards, as opposed to voluntary principles decided by companies

63. Referring to the Rana Plaza incident as a mobilizing force, speakers questioned the responsibility of companies in supply chain matrices and observed that multi-stakeholder initiatives, such as "The Accord" and "The Alliance", raised questions as to who should pay to ensure the safety of factories for workers. Panellists expressed a consensus concerning factory owners' basic obligation to provide a safe workplace, as well as on the concomitant social responsibility of corporate buyers to consider what squeezing profit margins could entail in terms of negative human rights impacts. Speakers favoured a public/private collaborative approach to monitor, report results and enforce compliance, in association with legal standards and initiatives. Citing the need for an overall cultural shift, panellists agreed there should be shared responsibility for bearing the costs of such change, which would reflect the complexity of the issues involved.

B. The Guiding Principles and United Nations human rights mechanisms

64. This session was moderated by Marta Maurás Pérez (Permanent Representative of Chile to the United Nations in Geneva), and the panel was composed of Caio Borges (Conectas); Dzidek Kedzia (Committee on Economic, Social and Cultural Rights); Victoria Tauli-Corpuz (Special Rapporteur on the rights of indigenous peoples); Carlos Lopez (International Commission of Jurists); and Michael Addo, Working Group member.

65. The session focused on how the different United Nations human rights bodies and mechanisms could work together to create synergies on issues related to business and human rights and the implementation of the Guiding Principles.

66. Reference was made to the statement by the Committee on Economic, Social and Cultural Rights regarding the corporate sector,[4] which refers to the obligation of States to ensure that companies undertake due diligence in order to respect human rights — an indication of how the Guiding Principles have influenced the work of the Committee. It was noted that under the International Covenant on Economic, Social and Cultural Rights, only States have obligations and corporations are not directly bound by the provisions of the Covenant; the Committee will prepare a general comment on the issue of business and economic, social and cultural rights.

67. The impact of trade and investment agreements on indigenous peoples was flagged as an area where the Working Group could complement the work of the Special Rapporteur on the rights of indigenous peoples.

68. The civil society speakers highlighted a range of issues: that the Guiding Principles be included in the universal periodic review as a standard item in the compilation prepared by OHCHR; a proposal to the Working Group to develop guidelines on access to remedy; and that a guide was being developed to the Committee on the Rights of the Child general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, which focused on business and human rights.

69. Further discussion addressed, inter alia, the opportunities of synergies between the Working Group and other human rights mechanisms; the need for further discussion on the nature and scope of the extraterritorial obligations of States in the area of business and human rights; and generally, the need to strengthen accountability of States and business with regard to business-related human rights impacts.

C. Sustainable development goals and business and human rights

70. The moderator of the session was Mac Darrow (OHCHR) and panellists were Catarina de Albuquerque (former Special Rapporteur on the human right to safe drinking water and sanitation); Pregs Govender (South African Human Rights Commission); Filippo Veglio (World Business Council for Sustainable Development); Bhumika Muchhala (Third World Network); Judit Arenas (International Development Law Organization (IDLO)); Puvan Selvanathan, Working Group member. A special video message by Amina J. Mohammed, United Nations Secretary-General's Special Adviser on Post-2015 Development Planning, was broadcast.

71. The aim of the session was to reflect on issues relating to business engagement with the post-2015 agenda and sustainable development goals (SDGs). Overall, key messages included businesses' growing interest in SDGs and the key role business could play in the

[4] See E/C.12/2011/1, para. 4

implementation and financing of the goals. Alongside that trend, the importance of ensuring the integration of human rights into the SDGs was discussed; panellists perceived a lack of progress in that area. Also highlighted was the challenge of ensuring policy coherence and partnership in developing and delivering the SDGs across a complex mix of issues and stakeholders.

72. Key questions addressed by panellists included the following:

- How are business incentives aligned with human rights and sustainability?
- What are the potential pitfalls of business engagement in the SDGs?
- What would it mean if the Guiding Principles were the foundation of business practice in the post-2015 world?

73. While encouraged by increasing private-sector involvement and acknowledging positive developments in the new framework, participants agreed that partnerships with mutual accountability and greater oversight were urgently needed. Panellists noted that the current multi-stakeholder partnership model relied on vague and voluntary commitments and ignored power and structural imbalances.

74. Addressing some of the potential pitfalls, panellists cited inequalities in terms of provision and affordability in the private sector, as well as the issue of over-use and wastage of natural resources by business. Also, as the majority of businesses are SMEs, it was noted that the post-2015 agenda must be made accessible and actionable to all types of businesses.

75. Recommendations included the establishment of an intergovernmental framework for partnerships rooted in the human rights framework, as well as ensuring businesses were fit for partnership through independent third-party evaluation.

X. Thematic track V: Good practice discussions

A. Meaningful stakeholder engagement in human rights due diligence

76. This session was organized by the Working Group, in collaboration with the International Federation of Human Rights Leagues (FIDH), Oxfam and the United Nations Global Compact. It was moderated by Chris Jochnick (Oxfam) and panellists were Danilo Chammas (Justiça nos Trilhos (Justice on the Rails)); Hervé Deguine (Michelin); Jan Klawitter (Anglo American); Yves Nissim (Orange Group); Nelly Romero (Coordinator of Indigenous Organizations of the Amazon River Basin (COICA), Ecuador); and Margaret Jungk, Working Group member.

77. Civil society speakers highlighted perceived unequal relationships between stakeholders and agreed that effective participation in stakeholder dialogue should enable affected communities to voice legitimate concerns and be heard. They felt that the Guiding Principles provided a tool to strengthen protection of stakeholders, such as indigenous peoples, but that more collaboration as well as good faith by all actors was needed. The specific challenge of upholding free, prior and informed consent of populations was considered a critical element for meaningful stakeholder dialogue. Business speakers referred to the challenges of stakeholder engagement caused by the misalignment between social and business timelines, which were bound by policies, processes, procedures and socioeconomic assessment tools in all operations. It was felt that power asymmetry was often overlooked and that communities could also exercise power. Companies are required to negotiate licences that define the parameters for their operations. However, ensuring a "social licence" to operate was also essential and required meaningful engagement and

consultation. The key is to ensure the representation of communities and at the same time address their needs. Achieving consensus, however, could be difficult in practice, because stakeholders might be highly divided, and it was not always clear who represented actual community interests. The OECD Guidelines for Multinational Enterprises, which incorporate key parts of the Guiding Principles, were considered an important step forward in terms of providing an entry point for company-civil society dialogue. The importance of building capacity within companies on the practicalities of carrying out human rights impact assessment, interaction with civil society and working to build trust with local partners was also highlighted. The value of real stakeholder engagement was highlighted through a concrete example shared by one of the business speakers: during the "Arab Spring" in Egypt when the company had been ordered to cut networks, it realized that it was impossible to fight against the Government alone. The Guiding Principles as well as multi-stakeholder initiatives such as the Global Network Initiative could provide a platform for dialogue that would involve peers and NGOs. Direct engagement with governments should also seek to enhance transparency and accountability. Ms. Jungk pointed out that the tendency was to view companies and communities as black boxes, without realizing that there might be conflicting agendas and aims or even cultural clashes both within companies and in many communities.

B. What can States, business, civil society and the United Nations do to support and protect human rights defenders who work on issues of corporate responsibility and accountability?

78. This session was organized by the Working Group, in collaboration with the International Service for Human Rights and the Permanent Mission of Norway. It was moderated by Hina Jilani (Advocate, Supreme Court of Pakistan, and former Special Representative of the Secretary-General on Human Rights Defenders), and panellists were Alejandra Ancheita (ProDesc, Mexico); Keith Harper (Permanent Representative of the United States of America to the United Nations in Geneva); Vanessa Havard-Williams (Linklaters LLP); and Sheila Keetharuth (Working Group on Extractive Industries, Environment and Human Rights Violations, African Commission on Human and Peoples' Rights).

79. A key message from the panel was that protecting human rights defenders, as critical change makers for addressing social challenges, was one of the most important conversations on the global human rights agenda. Threats against and criminalization of human rights defenders working on the issues of corporate responsibility and accountability were a global challenge and States had an international legal obligation to ensure protection of defenders. Currently, States in all regions were failing to assume that duty, and while the Guiding Principles have clarified expectations towards companies, considerable work remained for its implementation on the ground. A number of practical avenues were discussed. In the African regional context, the possibility of bringing specific cases to court through the African human rights mechanisms was highlighted. The role of governments was considered central and options for using the law to strengthen protection of human rights defenders were discussed. Specific regulatory developments were mentioned, including explicit legal protection of human rights defenders (Côte d'Ivoire) and the right to access to information (Sierra Leone). Development of national action plans was also seen as key; the process of developing such plans could play a role in identifying problems, clarifying expectations to business and defining the tools to address specific challenges. Policy tools available included procurement rules, reporting requirements and guidelines for security arrangements (such as the International Code of Conduct for Private Security Providers and the Voluntary Principles on Security and Human Rights). Other practical recommendations to States included: that there should be prompt investigations to avoid

impunity and to send a strong message that human rights were not only discussed but also implemented nationally and locally; States should strengthen accountability and also ensure a voice for communities which do not agree with investment projects; and financial assistance to NGOs might help to generate more credible monitoring and documentation of impacts. With regard to the role of business, it was stressed that the Guiding Principles represented a very useful step forward as they directly addressed business in a way that companies could relate to, using the language of due diligence. Addressing human rights risks was increasingly becoming routine for many companies and investors, as the business case for managing risks to stakeholders was becoming better understood. It was stressed that companies might be reluctant to openly support human rights defenders in difficult contexts as they had to be careful not to be seen as political actors. Practical considerations included the need to understand sensitivities; being transparent about policies; strengthening leverage through collective approaches; and being careful not to make things worse.

80. Further discussion reiterated many of the challenges faced by human rights defenders: threats and defamation by State and private actors; lack of access to information; lack of access to remedy, both at home and abroad; and collusion between public agents, the security industry and other actors. The potential of applying a specific case to protect human rights defenders, as done by the Inter-American Human Rights system, in other regions was addressed. A key issue discussed was how companies could exercise leverage in complex contexts. It was suggested that home governments could help to take the sting out of sensitive issues through measures such as export credit rules and that criteria set by institutional investors could have the same effect. Eventually, concrete action by companies on the ground would often depend on the strength of local relationships, credibility of available information and the need to avoid escalating adverse impacts and to protect one's own workers.

XI. Other parallel events

81. The call for proposals for externally led parallel sessions was issued through an online questionnaire that was posted on the Forum website in May 2014. Submissions were reviewed and selected on the basis of topic, stakeholder group and region, in order to ensure an appropriate balance, and were also compared with topics covered in the plenary and United Nations-led sessions, so as to avoid duplication and overlap. Considering the large number of submissions received and the limited amount of slots available during the Forum, the organizers decided to merge proposals that covered similar topics or that lent themselves to being combined.

82. There were 39 parallel sessions and events led by external stakeholders, covering a diverse array of themes and topics.[5]

83. On the implementation of the Guiding Principles, various sessions covered the trends and challenges of ensuring multi-stakeholder dialogue and cooperation; perspectives from companies, NGOs, trade unions and development finance institutions; and regional experiences from Asia, Europe, Africa and Latin America.

84. With regard to access to remedy, the focus was on trends, opportunities and challenges in relation to both judicial and non-judicial grievance mechanisms. Other topics

[5] For a full overview of the parallel sessions led by external stakeholders, see www.ohchr.org/EN/Issues/Business/Forum/Pages/2014ForumParallelEvents.aspx. Summaries of the sessions have been posted online.

included how to use social accountability to overcome collective action problems; recent developments in law and legal practice with regard to business and human rights; the importance of due diligence, with focus on financial regulation; the relevance of direct duty of care in protecting human rights; and assessing responsibilities and benchmarking progress in human rights in the financial sector.

85. Other sessions focused on the human rights implications of indirect sourcing practices in global supply chains; challenges and proposals with regard to export credit and the Guiding Principles; the role of food corporations with regard to the rights to adequate food and health; and responsible behaviour by Chinese companies abroad.

86. With regard to indigenous peoples, several sessions focused on access to justice and reparation within the context of business operations and challenges encountered in the context of extractive industries to be recognized as rights holders, including a focus on women.

87. Improving protection and ensuring the participation of land and environment defenders in all business initiatives and discussions were also covered, as were investigating and tackling labour rights abuses.

88. Other sessions discussed the forthcoming process to develop an internationally legally binding instrument, further to Human Rights Council resolution 26/9, and the possible challenges and advantages in establishing an international arbitration tribunal for business and human rights.

89. Another topical issue covered was the need to address security and human rights challenges in complex environments and how to put the international code of conduct for private security providers into practice.

90. Other themes were the power of data to address business and human rights; transnational cooperation among national human rights institutions on business and human rights; and public policy in Latin America.

91. Two recent publications were presented and discussed at the book launch event: *The Social License: How to Keep Your Organization Legitimate* (by John Morrison) and *Business and Human Rights in South East Asia – Risk and the Regulatory Turn* (Mahdev Mohan and Cynthia Morel, editors) .

92. Some parallel sessions were jointly organized with the Working Group: the session on national action plans was jointly organized with DIHR and ICAR, which led a discussion on the role of civil society, national human rights institutions and business actors, and presented the tools prepared by the two organizations to support national action plans. A session that was jointly organized with ILO examined new ILO standards on the elimination of forced labour and a multi-stakeholder approach to addressing contemporary forms of forced labour and trafficking, while another session, jointly organized with ICAR, Electronics Watch, DIHR and the Norwegian Agency for Public Management and eGovernment, focused on integrating human rights in public procurement. Other sessions were an event organized by Friedrich Ebert Stiftung and other NGOs, and involving the participation of directly affected stakeholders, which discussed how to apply the Guiding Principles in concrete situations in order to trigger change on the ground; a discussion led by Shift on improving human rights reporting and the contribution of the reporting and assurance frameworks initiative; and a multi-stakeholder discussion organized by the Measuring Business and Human Rights Project and other partners on the potential of benchmarking corporate respect for human rights.

93. In addition, OHCHR organized a training session on the Guiding Principles and led a multi-stakeholder discussion on the right to privacy in the digital age, based on good practices and lessons learned in the information and communications technology (ICT)

sector. United Nations Global Compact and Business for Social Responsibility organized a session focused on implementation of business and human rights tools and resources at the local level. A session on measures for implementing the Convention on the Rights of the Child in the context of State obligations on the impact of the business sector on children's rights was organized by the Committee on the Rights of the Child

XII. Closing plenary: Strategic paths forward and next steps for the global business and human rights regime

94. Forum Chair Mo Ibrahim presided over the closing plenary. Panellists were Aisha Abdullahi (African Union Commissioner for Political Affairs); Maria Fernanda Espinosa (Appointed Permanent Representative of Ecuador to the United Nations in Geneva); Thomas Thomas (CEO, ASEAN CSR Network); and Audrey Gaughran (Director, Global Thematic Issues, Amnesty International).

95. The aim of the closing plenary was to highlight visions for scaling up implementation of the Guiding Principles in all regions and building the common understanding that there is no inherent contradiction between advancing implementation of the Guiding Principles and advancing relevant standard-setting processes. The Chair began by reiterating the call for strengthening the accountability of governments and businesses.

96. Panelists discussed the application of the Guiding Principles in different regional contexts. The role of African regional mechanisms was highlighted, namely, the African Union's collaboration with the Working Group to hold a regional forum on business and human rights in 2014; the role of the relevant mechanisms of the African Commission on Human and Peoples' Rights to develop an African framework for implementing the Guiding Principles; and the African Union's willingness to support member States in developing national action plans. With respect to Asia, reference was made to a "regulatory turn" taking place in the ASEAN region, where there was increasing momentum for CSR in public policy, which again presented opportunities for uptake of the Guiding Principles, including in the context of national action plans. The appointed Permanent Representative of Ecuador stressed that the way forward should be to develop an international legally binding instrument on business and human rights in order to address current gaps in access to remedy for victims of business-related human rights abuse, prevailing impunity for wrongdoings and lack of compliance with non-binding standards for business. She emphasized that while national action plans might meet the specific needs of a particular country, they were not adequately suitable for dealing with extraterritorial challenges, which a treaty could be designed to address. Finally, she emphasized that the intergovernmental process to discuss the development of the treaty further to Human Rights Council resolution 26/9, which will start in 2015, should be open and inclusive so that all voices could be heard. The perspective of Amnesty International was that although the Guiding Principles provided a solid foundation, the reality on the ground remained unchanged. The representative highlighted that the space for litigation against companies was shrinking and that current national action plans and available grievance mechanisms, such as national contact points, were considered ineffective. She felt that the crux of the challenge was non-compliant companies; lack of access to remedy; corporate lobbying; and close relationships between business and States. She argued that a treaty should set out clearly what States needed to do to protect human rights and build on the Guiding Principles. In addition, comments from the floor argued that there was need to change the corporate culture from the top and that small actions at the level of individual businesses were making a difference, even if they did not deal with all the structural challenges.

97. The former Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, who led

the development of the Guiding Principles, shared his reflections. He stated that there was no intrinsic contradiction between implementation of the Guiding Principles and further international legalization and emphasized the need to avoid a polarized debate. In going forward, he emphasized that future legalization should build on the dynamics already under way in implementing and applying the Guiding Principles, including ongoing efforts by international and regional organizations, governments, business actors and others. He emphasized that there was a pressing need to scale up implementation efforts as well as monitor progress. In addition, he recommended that further debate on legalization should reflect current global realities, one of the most important of which is the increase in transnational corporations based in "emerging markets". Mr. Ruggie also stated that an exclusive focus on transnational corporations was problematic, as illustrated by the Rana Plaza disaster. He concluded that the "business and human rights" field was too vast and complex for governance through a single set of actionable treaty obligations; instead, the focus should be on international legal instruments that were carefully crafted precision tools to respond to specific protection and accountability gaps.

98. In closing, the Chair of the Working Group noted that there was need to engage more States and their ministries; to see more fearless business leaders taking up the Guiding Principles; to ensure access to effective remedies; and to have more partnerships within and across stakeholder constellations.

99. The fourth annual Forum will be held from 16 to 18 November 2015.