

Submission to the United Nations Working Group on
Human Rights and Transnational Corporations
and other Business Enterprises

Concerning the 2013 United Nations Forum on Business and Human Rights

April 2013

Background

The Institute for Human Rights and Business (IHRB) appreciates the opportunity to provide suggestions to the United Nations (UN) Working Group on human rights and transnational corporations and other business enterprises concerning preparations for the 2013 UN Forum on Business and Human Rights. Given the central role of the annual Forum as a global multistakeholder gathering to assess trends and challenges in the implementation of the UN Guiding Principles on Business and Human Rights and to promote dialogue and cooperation, IHRB believes it is important to support all efforts to build on the success of the first UN Forum and make the 2013 session a productive event for all.

The 2012 Forum was successful in maintaining momentum around implementation of the Guiding Principles and this needs to be built on in 2013 by a more targeted approach, one that requires the relevant stakeholders (business, government, civil society and others) to engage as much as possible *together* and not in parallel. The Forum is the unique global opportunity to take stock collectively, and set agendas and expectations for future work.

Following the categories proposed by the Working Group, this submission provides ideas and suggestions that IHRB hopes will be of assistance to Working Group members in planning for the 2013 Forum. IHRB would be pleased to respond to any questions or comments the Working Group may have on this submission and looks forward to opportunities for further dialogue and collaboration in support of this important mandate.

1. Specific topics/panels for the Forum

The 2012 Forum understandably sought to cover a wide range of issues relating to the business and human rights agenda. The challenge for 2013 is not only to maintain the interest and engagement of the diverse participants who attended previously but also to expand outreach to new actors while looking more deeply at particularly difficult challenges as part of the Working Group's mandate to promote "the effective and comprehensive dissemination and implementation of the Guiding Principles".¹

¹ UN Human Rights Council resolution A/HRC/RES/17/4, 6 July 2011, paragraph 6(a)

IHRB suggests that more time be given during the 2013 Forum to dialogue framed around a limited number of crosscutting topics that are critical to effective implementation of the Guiding Principles. For example:

Focus on Deepening Implementation:

- **Capacity related challenges.** The Human Rights Council addressed the need for further capacity building as part of its October 2012 resolution on the role of the UN system in implementing the Guiding Principles.² It would be important for the 2013 Forum to address capacity challenges from all perspectives, including through a review of steps taken by UN programmes and agencies to implement recommendations made by the Secretary-General on this subject³ as well as proposals relating to the establishment of a global fund to enhance the capacity of stakeholders to advance implementation of the Guiding Principles.⁴
- **States as economic actors.** While states are increasingly active in providing guidance to the private sector on their responsibility to respect human rights, less attention has been given to the multiple roles and responsibilities of states as economic actors. The 2013 Forum could usefully examine a range of issues under this category, including questions relating to state owned enterprises, public private partnerships as well as public procurement policies and application of the Guiding Principles to the activities of export credit agencies.

Focus on Outstanding and Emerging Issues:

- **Legal accountability.** Professor John Ruggie, in his role as chair of the 2012 Forum, highlighted in his opening remarks⁵ the many differences between states in their approaches to the question of corporate liability for gross human rights abuses, which undermine efforts to implement the Guiding Principles. Opportunities for considered multi-stakeholder discussion during the 2013 Forum on this critical topic would be an important addition to the agenda.
- **Agenda setting.** It would be useful to have a section at the end of each Forum to consider key emerging issues that should be given greater attention as part of the business and human rights agenda. This might prompt a more strategic forward-looking discussion each year, in addition to panels, which assess progress made on already well-established topics. Such a session would contribute to developing a broader sense of global trends around the Guiding Principles. Two topics that might be included in such as discussion during 2013 are responsible lobbying and tax policies.

2. Specific industry sectors to inquire on how the intersection between the three pillars of the Guiding Principles (the State Duty to Protect, the Corporate Responsibility to Respect and Access to Remedy) play out in such sectors across the globe

A number of industry sectors play key *enabling* roles for other sectors. IHRB suggests the UN Forum should focus on one or more such sectors that are instrumental for the efficient operation of many other sectors *and* that have not been at the forefront of business and human rights

² UN Human Rights Council resolution A/HRC/RES/21/5, 16 October 2012.

³ Report of the UN Secretary-General on Contribution of the United Nations system as a whole to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles on Business and Human Rights, UN document A/HRC/21/21, 2 July 2012.

⁴ A/HRC/RES/21/5, paragraph 11.

⁵ Available at:

<http://www.ohchr.org/Documents/Issues/Business/ForumSession1/SubmissionsStatements/OpeningJRuggie.pdf>

discussions to date. Such sectors provide opportunities for dialogue across all three pillars of the UN Protect, Respect and Remedy framework. For example:

- **Finance and investment.** Given the importance of the finance and investment industry to all other business sectors, as well as the relative lack of participation on the part of representatives from this sector in the 2012 Forum, it would seem to be a logical candidate for more focused attention in 2013, building on what should be a substantial body of knowledge on the sector by December 2013: the Equator Principles initiative, which is currently in the process of integrating the Guiding Principles into its standards for banks; the OECD which is addressing human rights implementation in the broader financial sector; UNEP FI which has commissioned a paper on banking and human rights; the work of the Thun Group of banks; and the recent guide for investors on business and human rights.⁶ It will be important to discuss good practices in this area but not lose sight of the broader challenges still ahead in steering and regulating the sector as increasing financialisation is pushing the sector further from the principle of accountability the Guiding Principles seek to achieve.
- **Infrastructure.** The infrastructure sector plays a significant role in providing a platform for or specifically contributing to the fulfillment of numerous human rights. As the infrastructure sector is increasingly privatised, it is often moving further from those objectives. However, with appropriate regulation and attention to the responsibility to respect by all actors, that does not have to be the case. The infrastructure sector has been largely absent from the business and human rights debate to date and so is an important candidate of focus for Forum discussions that move beyond privatisation vs. non-privatisation to deeper consideration of the multidimensional aspects of corporate responsibilities and state duties in this area.
- **Information and Communication Technology (ICT).** Many states acknowledge the enabling role of the ICT sector in boosting economic growth, social inclusion, healthcare and finance and are launching strategies to promote the use of ICTs as part of economic, social, civil and political development. While there are many positive impacts of ICTs on human rights, there can be negative impacts as well, such as when ICTs are misused by governments to restrict specific human rights. ICT companies risk being complicit in human rights violations, for example, by complying with arbitrary government requests for censorship, user data and surveillance. Especially in terms of abuses of freedom of expression and privacy, grievance mechanisms in the sector are under-developed or non-existent. The Forum could usefully highlight this gap in the ICT sector's implementation of the responsibility to respect human rights and assess the state of various efforts to address the links between ICT and human rights by different stakeholders.

3. Regional dynamics in the implementation of the Guiding Principles, including the interaction between regional bodies and individual States and companies

IHRB welcomes the focus by the Working Group on the role of regional bodies, which can play a critical role in encouraging and harmonising state and corporate actions on business and human rights, including through benchmarking good practices. A number of notable regional examples/issues would benefit from further discussion at the 2013 Forum.

⁶ *Investing the Rights Way: A Guide for Investors on Business and Human Rights*, Available at: <http://www.ihrb.org/publications/reports/investing-the-rights-way.html>

Examples from Regional Organisations

- **European Union:**
 - **European Union Sector Guides.** IHRB and Shift have worked with the EU to develop human rights guidance on behalf of the European Commission relating to three business sectors: ICT, Oil and Gas, and Employment and Recruitment Agencies.⁷ The European Commission process placed a premium on multi-stakeholder consultation and input from around the world. The guides will be published shortly. While the guides take particular account of the experience of European-based companies, they are intended to be as globally applicable as possible. As well as making the guides available at the Forum, broader discussion on the utility of developing implementation guidance for additional business sectors would be useful, as regional organisations are well-placed to bring together multistakeholder processes, grounding guidance in regional realities while ensuring quality and integrity consistent with international standards.
 - **National Action Plans on Business and Human Rights.** The EU has invited its 27 Member States to prepare national action plans on business and human rights. The European Group of National Human Rights Institutions (NHRIs) has been working on a framework to help support this process. The Forum would provide a good opportunity to develop a “twinning” process between the EU and/or EU Member States and/or NHRIs with other regional partners who may be interested in learning from these experiences.
- **ASEAN.** The work of both the ASEAN Intergovernmental Commission on Human Rights and the Human Rights Resource Centre for ASEAN in analysing business and human rights in the region and promoting greater attention to the issue should also be highlighted as part of any regionally focused discussion during the Forum.

Topic of Regional Importance

- **Investment treaties.** Efforts to ensure an appropriate balance between necessary investor protections to secure foreign direct investment and adequate public policy space to protect human rights continue to be debated and would be an important issue to include on the 2013 Forum agenda. A number of examples of ongoing developments in this area include a recently adopted Statement on Shared Principles for International Investment between the US and the EU; UNCTAD’s 2012 Global Investment Report, which presented its new investment policy framework for sustainable development; OECD plans to update its policy framework for investment, and; the recently revised International Chamber of Commerce Guidelines for International Investment. Access to remedy for investors has not been accompanied by any specific mechanisms to improve remedies for workers or local communities negatively impacted by foreign investment. Any discussion of investment treaties at the Forum should include attention to the relevance of all three Pillars of the UN Protect, Respect and Remedy framework.

⁷ Available at: <http://www.ihrb.org/project/eu-sector-guidance/index.html>

4. Examples of Guiding Principles implementation practice by States, business enterprises or other stakeholders on all or certain aspects of the Guiding Principles, for example, the issue of transparency measures such reporting requirements

There is value in using portions of the Forum agenda to examine efforts by individual states, companies and other actors to implement the Guiding Principles. Equally important, the Forum presents an opportunity to draw lessons from initiatives involving multiple actors in particular geographic and thematic contexts.

For example, the Guiding Principles, along with other international standards, are currently being discussed as benchmarks for responsible investment in the context of ongoing political and economic reforms in Myanmar. IHRB suggests that the Forum review developments in Myanmar in terms of how the Guiding Principles are being integrated into a range of initiatives relating to responsible investment and good practices for businesses operating in the country. The International Labour Organisation should be directly involved in such discussions given its extensive experience and activities in the country. IHRB and the Danish Institute for Human Rights are establishing a new Myanmar Centre for Responsible Business with the support of a number of donor governments that will be explicitly focused on promoting attention to the Guiding Principles by all stakeholders. A discussion on interim lessons learned through this process and how similar efforts might be taken in other contexts would be a useful part of the overall Forum agenda.

In addition to geographically focused initiatives, efforts by a range of stakeholders to utilize the Guiding Principles as a key tool in addressing specific thematic challenges are also deserving of attention during the 2013 Forum. For example, the private sector has an important and potentially transformative role to play in the fight against human trafficking. Increasingly the Guiding Principles are being used as a means of framing innovative solutions, which contribute to reducing both the push and pull factors which perpetuate this modern day slavery. The UN Special Rapporteur on human trafficking, Joy Ngozi Ezeilo, has focused particular attention on human trafficking in global supply chains and has stressed the importance of the Guiding Principles within these efforts.⁸ The results of these and related initiatives such as the Dhaka Principles for Migration with Dignity developed by IHRB with the support of ITUC and CIETT (The International Confederation of Private Employment Agencies)⁹ which draw directly on the Guiding Principles would benefit from focused discussion during the 2013 UN Forum.

5. Specific examples of strategic initiatives that can shape State and business uptake of the Guiding Principles

There are numerous strategic initiatives that could potentially expedite uptake of the Guiding Principles, all of which merit discussion at the 2013 Forum. These include:

- Benchmarking the work of existing and future Multi-Stakeholder Initiatives (MSIs) against the Guiding Principles;
- Highlighting and building the capacity of National Human Rights Institutions to address business and human rights challenges;
- Encouraging government efforts to develop National Action Plans to implement the Guiding Principles and developing systems through which such efforts can be monitored and assessed over time;

⁸ Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum, Expert consultation on human trafficking and global supply chains, UN document A/HRC/23/48/Add.4, 4 March 2013.

⁹ Available at: <http://www.dhaka-principles.org/>

- Assessing the status of specific guidance on the implementation of the Guiding Principles for different industry sectors, thematic issues, vulnerable groups etc. and drawing together lessons learned (or possibly criteria) on how future guidance of this kind should be most effectively developed, disseminated and implemented;
- Highlighting the work of regional organisations, such as the EU and ASEAN, in promoting dialogue and benchmarking among members with respect to the Guiding Principles.

6. Modalities that may be conducive to engaging key stakeholders and promoting multi-stakeholder dialogue at the Forum

The 2012 Forum was successful in gathering a large number of diverse representatives together to discuss the developing business and human rights agenda as well as uptake of the Guiding Principles around the world. Attention should be given when planning the 2013 Forum agenda to the concern expressed by some who participated in the 2012 event that a significant number of the parallel sessions during the Forum were dominated by either civil society or business, with governments often playing a minimal role. In designing the 2013 agenda, the principle of multistakeholder dialogue and action should clearly remain central. Every effort should be made to ensure that all stakeholders come together to challenge each other on the complex realities of tackling the many business and human rights dilemmas that remain. Member states should also be encouraged to help frame and/or respond to particular dilemmas and to play an active role throughout the Forum. The common elements of “mutual accountability” and “maximum leverage” should be stressed as many challenges in implementing the Guiding Principles clearly will not be solved without such difficult but necessary cooperation.

7. How to enhance the geographical balance and participation by key stakeholders from all regions, including business enterprises and affected individuals and communities

The challenges of building stronger global participation and balance at a Geneva-based Forum are self-evident, as are the achievements of 2012 in this respect. However, efforts must be enhanced including by adding capacity and funding to ensure that as many member states as possible are represented in terms of state and non-state actor participation in the 2013 Forum.

While understanding the cost implications involved, Forum organisers should consider every way feasible to exploit web-based tools to enable remote participation for those stakeholders unable to make the journey to Geneva. This could involve, for example, video links with stakeholders in each global region, live streaming of sessions which permits questions from online participants, as well as live ‘Q and A’ sessions with the Working Group and other participants.

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