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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Connecting the business and human rights and the anti-corruption agendas

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*

Summary

The present report was prepared pursuant to Human Rights Council resolutions 17/4 and 35/7.

The Working Group examines how the business and human rights agenda, articulated in the Guiding Principles on Business and Human Rights, and anti-corruption efforts, are interconnected. It examines the good practices that States, businesses and civil society can undertake to address corruption when it has negative impacts on human rights in the context of business-related activity, with a view to preventing such negative impacts and to ensuring access to remedy. It also demonstrates how measures driving responsible business practices in relation to business and human rights and anti-corruption efforts, can reinforce each other to ensure coherent policy.

* The present report was submitted after the deadline so as to include the most recent information.

I. Introduction

A. Background, aims and objectives of the report

1. Corruption has devastating impacts worldwide. It causes economic harm and undermines the enjoyment of human rights. In its resolution 41/9, the Human Rights Council encouraged its mechanisms to consider the negative impact of corruption on the enjoyment of human rights. The Working Group on the issue of human rights and transnational corporations and other business enterprises has thus prepared the present report and aims to complement the Council's work.

2. Building on its report on best practices and how to improve on the effectiveness of cross-border cooperation between States with respect to law enforcement on the issue of business and human rights,¹ in which it examined corruption, the Working Group examines how corruption involving business enterprises can lead to human rights abuses, sometimes with fatal consequences. It underlines why a focus on preventing corruption by all actors may prevent and mitigate business-related human rights abuses. The Working Group also explores how implementation of the three pillars (protect, respect and remedy) of the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,² and the implementation of the anti-corruption agenda intersect, and how efforts in both areas can be mutually reinforcing. The Working Group reflects on how measures aimed at driving responsible business conduct across these two dimensions can drive policy coherence. It also examines how to better integrate human rights due diligence in anti-corruption and anti-bribery measures, moving from a risk-to-business to a risk-to-people approach. The Working Group concludes with recommendations for States, businesses and civil society, including in areas such as improving policy coherence, enhancing human rights due diligence and strengthening access to remedy.

B. Methodology

3. The Working Group held a session entitled "Corruption: the business and human rights dimension" at the 2019 annual Forum on Business and Human Rights.³ It drew on interviews with experts and consultations conducted with States, business associations, civil society organizations and other stakeholders, including at an expert meeting held with the support of the Permanent Missions of Norway and of Sweden in November 2019 and during the twenty-fifth session of the Working Group, held in February 2020.⁴ The Working Group built on its thematic reports and engagement with States and stakeholders, including findings from country visits.⁵ It also benefited from contributions sent by States and other stakeholders.⁶

4. The Working Group was cognizant of the Human Rights Council Advisory Committee's study on utilizing non-repatriated illicit funds with a view to supporting the achievement of the Sustainable Development Goals,⁷ the report of the United Nations High Commissioner for Human Rights (OHCHR) on challenges faced and best practices applied by States in integrating human rights into their national strategies and policies to fight against corruption, including those addressing non-State actors, such as the

¹ A/HRC/35/33.

² A/HRC/17/31, annex.

³ See <https://2019unforumbhr.sched.com/event/U98x/corruption-the-business-and-human-rights-dimension>.

⁴ See www.ohchr.org/EN/Issues/Business/Pages/WGSessions.aspx.

⁵ See www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx#hrc.

⁶ See www.ohchr.org/EN/Issues/Business/Pages/2020Survey.aspx.

⁷ A/HRC/43/66.

private sector,⁸ and the special session of the General Assembly against corruption, to be held in 2021.⁹

C. Coronavirus disease pandemic

5. The present report was drafted during the coronavirus disease (COVID-19) pandemic. The accompanying economic crisis poses a test for governments and business: how to not lower responsible business standards while trying to support economies. The Secretary-General has emphasized that the recovery must lead to a better world.¹⁰ The Guiding Principles provide one blueprint for action. Their implementation requires that responsible governments and businesses improve policy coherence, collaboration, transparency and their own accountability.¹¹

6. Corruption often arises during crises, particularly when public institutions are weak. Procurement of medicines and supplies for health systems is one area most vulnerable to corruption.¹² Corruption in the health-care sector causes annual losses of approximately \$500 billion.¹³ With health-care systems strained worldwide, diversion of critical resources due to corruption threatens the rights to health and life. A United Nations policy brief has highlighted the need to “push back against those who seek opportunistically to use the crisis to ... steal through corruption resources intended for the pandemic response”.¹⁴ TRACE, an anti-bribery business association, has recognized that the pandemic means that every sector will face new corruption, business and human rights challenges, including in relation to workforce and labour management, privacy and surveillance, supply chains, and security. It has highlighted how companies’ anti-corruption programmes can integrate human rights, for example through due diligence and risk assessments.¹⁵ The pandemic makes responsible, coherent and coordinated action on business and human rights and corruption urgent.

II. Connections between the business and human rights and the anti-corruption agendas within the United Nations and beyond

7. Corruption is a complex phenomenon affecting all States. It takes many forms, including bribery, extortion, cronyism, nepotism, parochialism, patronage, influence peddling, graft, embezzlement and fraud. While there is no universal definition, the United Nations Convention against Corruption addresses many different forms of corruption, such as bribery, trading in influence, abuse of functions and private sector corruption. The Convention, one of the most widely ratified international treaties, is the only legally binding universal anti-corruption instrument. In the present report, the Working Group addresses corruption as a spectrum of acts outlined in the Convention, which includes bribery, and other acts.

8. The connection between human rights and corruption has long been acknowledged within the United Nations¹⁶ and beyond. Corruption can have devastating and long-lasting

⁸ A/HRC/44/27.

⁹ See <https://ungass2021.unodc.org/ungass2021/index.html>.

¹⁰ See www.un.org/sg/en/content/sg/articles/2020-04-02/recovery-the-coronavirus-crisis-must-lead-better-world.

¹¹ See also www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25837&LangID=E.

¹² See <https://rm.coe.int/corruption-risks-and-useful-references-in-the-context-of-covid-1/16809e33e1>.

¹³ See <http://ti-health.org/wp-content/uploads/2019/03/IgnoredPandemic-WEB-v3.pdf>.

¹⁴ See www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf.

¹⁵ See www.paulhastings.com/docs/default-source/pdfs/human-rights-covid.pdf.

¹⁶ See, for example, Human Rights Council resolutions 35/25, 29/11, 23/9 and 21/13. See also A/HRC/41/20, A/HRC/32/22, A/HRC/28/73, A/HRC/26/42, A/HRC/23/26, A/HRC/4/71, and www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx.

impacts on human rights. It may undermine the availability, quality and accessibility of goods and services that States need to provide to meet their international human rights obligations.¹⁷ Moreover, corruption undermines the functioning and legitimacy of State institutions and weakens the rule of law. Groups and individuals who have been marginalized and discriminated against suffer disproportionately from corruption,¹⁸ and corruption involving business harms the human rights of workers and communities affected by it.¹⁹ International corruption indices, such as Transparency International's Corruption Perceptions Index, demonstrate strong correlations between high levels of corruption in States and widespread human rights violations.²⁰ The Conference of the States Parties to the United Nations Convention against Corruption explored corruption and human rights in 2019, at its eighth session.²¹

9. States have demonstrated their commitment to fighting corruption within the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda of the Third International Conference on Financing for Development. Sustainable Development Goal 16 is particularly linked to combating corruption, especially targets 16.4 and 16.5. Rights-based approaches to tackling corruption and implementing the Guiding Principles are critical to realizing the Sustainable Development Goals.²²

10. Exploration of the link between human rights and corruption has largely focused on the harm that the corrupt conduct of States causes to rights holders. When businesses engage in corruption, such as bribe-paying, they may be causing human rights abuses or contributing to abuses committed in furtherance of their business activity. Likewise, human rights abuses may fuel corruption. International actors have mainly focused on preventing businesses from engaging in bribery and enforcing sanctions for breaches. While bribery certainly has negative impacts, including on the economy, there is much more to explore. For example, when businesses engage in corruption, what are the human rights issues? Given that businesses can be both drivers and beneficiaries of corruption, it is imperative to consider the harms caused to rights holders, and to acknowledge that acts beyond bribery, for example grand corruption and kleptocracy, have significant human rights impacts. Banks, lawyers and other private sector actors enable kleptocrats to engage in mass-scale corruption and plunder.²³ Coherent policy and action by governments and business enterprises need to address the human rights abuses linked to corruption in the business context. In the present report, the Working Group examines how business actors are connected to human rights abuses by virtue of their corrupt activities. It also considers how States, businesses and civil society should address this through policy reform and an aligned approach to preventing corruption and ensuring business respect for human rights.

III. Using a business and human rights lens to consider corruption: key sectors and contexts

11. In the present section, the Working Group provides an overview of areas where corruption leads to systematic abuse of human rights in the business context, and where steps

¹⁷ See, for example, www.u4.no/topics/human-rights/basics, and www.oecd-ilibrary.org/governance/consequences-of-corruption-at-the-sector-level-and-implications-for-economic-growth-and-development_9789264230781-en.

¹⁸ See, for example, www.undp.org/content/dam/aplaws/publication/en/publications/womens-empowerment/corruption-accountability-and-gender-understanding-the-connection/Corruption-accountability-and-gender.pdf.

¹⁹ See, for example, www.icar.ngo/publications-2017-5-9-tainted-lands-corruption-in-large-scale-land-deals/.

²⁰ See also www.ichrp.org/files/papers/131/131_-_Landman_and_Schudel_-_2007.pdf and <https://muse.jhu.edu/article/694699/pdf>.

²¹ See www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/SpecialEventHRGenderCorruption.aspx.

²² See www.ohchr.org/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf.

²³ See www.journalofdemocracy.org/articles/the-rise-of-kleptocracy-launders-cash-whitewashing-reputations/.

can be taken to address the associated challenges. This highlights that there are sectors and contexts that merit deeper examination by all stakeholders; there is a need to go beyond “box ticking” and focus on rights holders when addressing business conduct.

A. Public procurement and concessions

12. Public procurement – the purchase by governments and State-owned enterprises of goods, services and works and the award of government concessions – is susceptible to corruption, often in the forms of bribery, embezzlement and abuse of functions and price-fixing, cartels and other anti-competitive practices.²⁴ Public procurement, and corresponding opportunities for corruption, may involve multiple sectors. The risks are exacerbated by the volume of transactions, the financial interests at stake and “the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders”.²⁵ Some businesses will pay bribes to win a contract or concession, sometimes following demands from government officials. This may result in States not receiving value for money. In some cases, vital public services key to the realization of human rights, such as health care, education and housing, are partially or not delivered. In Organization for Economic Cooperation and Development (OECD) member countries, 12 per cent of gross domestic product is spent on public procurement.²⁶ According to the World Trade Organization (WTO), on average, government procurement accounts for 10 to 15 per cent of an economy’s gross domestic product.²⁷ OECD found that 57 per cent of the 427 bribery cases concluded under the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions involved bribe payments connected to public contracts awards.²⁸

13. The State as an economic actor (owner, lender and buyer) has leverage to drive good practice by exercising and requiring due diligence. In line with article 9 of the United Nations Convention against Corruption, which requires States to take steps to reform procurement processes to prevent corruption, many States require companies to make anti-corruption commitments when competing for government contracts or concessions. This is not the same for human rights commitments. The commentary to Guiding Principle 6 of the Guiding Principles clarifies that the State’s duty to protect human rights extends to public procurement and that States have a unique opportunity to promote awareness of, and respect for, human rights by enterprises it conducts transactions with, including through contractual terms. In doing so, States would ensure that they were contracting with enterprises committed to corruption-free, responsible business. Despite some emerging practice, public authorities have not generally operationalized the State’s duty to protect human rights through procurement.

B. Land acquisition

14. Weak land governance, where rights to land and natural resources are not properly documented, are weakly enforced or are otherwise not effectively recognized,²⁹ coupled with limited transparency, enables corrupt officials and businesses to thrive.³⁰ Bribery is particularly prevalent in land-acquisition contexts, for example when officials accept bribes from companies for access to or to register land. Corruption also takes place where the police, judiciary or other State authorities permit or enable land to be misappropriated. While large-scale land acquisition is required for many business activities, such as agribusiness and infrastructure projects, corruption in this context often results in very large numbers of people

²⁴ See www.unodc.org/e4j/en/anti-corruption/module-4/key-issues/corruption-in-public-procurement.html. See also contributions from Poland and Uganda.

²⁵ See www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf.

²⁶ See www.oecd.org/gov/public-procurement/.

²⁷ See www.wto.org/english/tratop_e/gproc_e/gproc_e.htm.

²⁸ See www.oecd-ilibrary.org/governance/oecd-foreign-bribery-report_9789264226616-en.

²⁹ See www.fao.org/3/am943e/am943e00.pdf.

³⁰ See www.icar.ngo/publications-2017-5-9-tainted-lands-corruption-in-large-scale-land-deals/.

being dispossessed of their land.³¹ The Working Group has highlighted the special relationship between indigenous peoples and their ancestral land and observed that compensation, or an offer of alternative land, may not remedy forced displacement.³² The lack of remedy and the violation of the relationship between people and land makes indigenous peoples' experience of losing land to corrupt land acquisition particularly pronounced.

15. In the purchase and titling of land, there is the potential for corruption by companies through different bureaucratic processes.³³ It is critical that States strengthen land governance institutions and ensure that people can effectively gain title to land and recognition of their land rights. Effective remedy is needed to prevent the human rights abuses that may arise when corruption occurs and people are wrongfully dispossessed or deprived of their property and livelihoods.³⁴ Governments need to strengthen policy coherence regarding environmental impact assessments, large-scale development projects, land management and forest conservation.³⁵

C. Health and pharmaceutical supply chains

16. The pandemic provides an opportunity to consider corruption in supply chains and how a business, wherever it is in the supply chain, can be implicated in human rights abuses by causing, contributing to or being directly linked to them due to its business relationships with other parties.³⁶ Global supply chains are often susceptible to corruption, as companies and their agents may pay bribes to gain access to markets. Bribes may be paid to avoid government health and safety inspections, for example in factories. Corruption results in essential products, such as food and medicine, being diverted from public market supply chains into private hands.

17. Even in non-crisis settings, corruption afflicts the pharmaceutical sector. Allegations of corruption in the health-care sector are persistent. Responses to the pandemic within these sectors may result in an increase in corrupt or abusive activities that may undermine States' responses.³⁷ Drug diversion presents a challenge in pharmaceutical supply chains, as drugs may be diverted from public use to parties who pay bribes to acquire scarce medicines. The penetration of counterfeit and substandard medicines into supply chains is another challenge.

18. In March 2020, *Global Health Action* published, jointly with the World Health Organization, an issue on anticorruption, transparency, and accountability in the health sector.³⁸ Topics covered related to the sector's ability to prevent, detect and sanction corruption in order to address the threats that such corruption poses to the ability of health systems to perform effectively during crises. While the global need for health-care services provides opportunities for companies to engineer, produce and deliver equipment such as ventilators,³⁹ there are risks of corruption and price-gouging due to scarcity of supply.⁴⁰ The Basel Institute on Governance has noted that effective governance is needed during this public health crisis.⁴¹

19. The pandemic highlights the risks to people posed by corruption and business-related human rights abuses. The Working Group reminded stakeholders that the business sector

³¹ Ibid.

³² A/72/162, para. 27.

³³ A/71/291, para. 62.

³⁴ Ibid., para. 90.

³⁵ A/74/198, para. 37.

³⁶ A/71/291, para. 35.

³⁷ See www.transparency.org/news/feature/corruption_and_the_coronavirus.

³⁸ Available at www.tandfonline.com/toc/zgha20/13/sup1.

³⁹ See <https://eandt.theiet.org/content/articles/2020/03/rival-companies-work-together-to-manufacture-medical-ventilators/>.

⁴⁰ See <https://ti-health.org/content/coronavirus-covid19-corruption-health-systems/>.

⁴¹ See www.baselgovernance.org/blog/rethinking-governance-times-covid-19-pandemic.

continues to have human rights responsibilities in this crisis.⁴² The Guiding Principles require that transactions conducted between States and business enterprises are subject to human rights due diligence, such that the human rights impacts of any measures (including the potential for corruption) are assessed and mitigated to the greatest extent. Business enterprises must respect human rights by exercising due diligence to prevent harms to people and address identified adverse impacts. The pandemic makes apparent the link between such due diligence and protecting the right to life.

D. Extractive sector

20. The extractive sector has been highlighted as an area in which significant corrupt activities take place, often regarding gaining access to profitable government concessions.⁴³ OECD found that one fifth of transnational bribery cases concluded between 1999 and 2014 had occurred in the sector.⁴⁴ In this sector, corruption and human rights abuses can stem from similar causes. The connection between corruption and human rights abuses has been demonstrated in specific contexts,⁴⁵ and corruption in the sector has been noted by the Human Rights Committee in concluding observations.⁴⁶ While some Governments have explored ways to incentivize human rights due diligence by extractive companies, including through regulations on mandatory due diligence and disclosure,⁴⁷ there are recurrent issues concerning the lack of human rights impact assessments in processes for granting a licence or concession, or mining, oil or gas rights. The Extractive Industries Transparency Initiative, a multi-stakeholder framework to combat corruption in the extractive sector, has been endorsed at least 3 times by the Group of 20 and 10 times by the Group of 7/Group of 8, and the General Assembly has taken note of the Initiative, demonstrating consensus about a global problem needing a solution.⁴⁸

21. Despite some good practices regarding supply chains⁴⁹ and human rights due diligence,⁵⁰ the human rights impacts of corruption in the extractive sector remain significant. In indigenous communities, for example, extensive mining and oil and gas extraction generates significant adverse human rights impacts affecting the rights to health and to an environment adequate for health and well-being.⁵¹ Granting concessions without proper environmental or social risk assessments, for example, leads to a host of human rights abuses that have an impact on the local population. Grievances concern the lack of meaningful consultations with local communities, in particular indigenous peoples, and non-compliance with the requirement of free, prior, informed consent in the context of business activities on their lands, set out in the United Nations Declaration on the Rights of Indigenous Peoples.⁵² This issue was addressed in resolution 1/18 of the Inter-American Commission on Human Rights and the Organization of American States.

⁴² See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25746&LangID=E.

⁴³ See www.oecd.org/dev/Corruption-in-the-extractive-value-chain.pdf.

⁴⁴ See www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm.

⁴⁵ See, for example, <https://reliefweb.int/report/democratic-republic-congo/powering-down-corruption-tackling-transparency-and-human-rights>; www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-knew/; and www.globalwitness.org/en/campaigns/oil-gas-and-mining/take-the-future/.

⁴⁶ See, for example, CCPR/C/NGA/CO/2, paras. 12–13; CCPR/C/GNQ/CO/1, paras. 18–19; and CCPR/C/NER/CO/2, paras. 10–11.

⁴⁷ See, for example, the Extractive Sector Transparency Measures Act adopted in Canada.

⁴⁸ See www.cmi.no/publications/6300-has-the-eiti-been-successful.

⁴⁹ See, for example, http://mneguidelines.oecd.org/Brochure_OECD-Responsible-Mineral-Supply-Chains.pdf.

⁵⁰ See, for example, www.icmm.com/mining-principles.

⁵¹ See www.un.org/press/en/2017/hr5357.doc.htm; <https://globalexchange.org/2016/06/02/the-devastating-effects-of-extractive-activities-on-perus-indigenous-peoples/>; and [www.europarl.europa.eu/RegData/etudes/STUD/2014/534980/EXPO_STU\(2014\)534980_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534980/EXPO_STU(2014)534980_EN.pdf).

⁵² A/71/291, paras. 67–74.

E. Gender dimensions of business and human rights abuses and corruption

22. Women and girls experience the adverse impacts of business activities differently and disproportionately as compared to men and boys, and face additional barriers to remedies.⁵³ The Working Group has developed a gender framework and provided recommendations regarding integrating gender perspectives when implementing the Guiding Principles.⁵⁴ Corruption in the business sector may increase women's economic marginalization, including by limiting their access to credit and finance. In the informal sector, women may be more likely to be asked for bribes and illegally collected tax payments.⁵⁵ Corruption enables intersecting forms of discrimination, exclusion, unfairness, prejudice and inequality. The Inter-American Commission on Human Rights has highlighted the serious impact of corruption on individuals facing discrimination, including women and children.⁵⁶ As women experience corruption differently to men,⁵⁷ a gender lens should be applied to all anti-corruption efforts. The Working Group has observed that States and businesses must be sensitive to how women experience adverse human rights impacts differently.⁵⁸

IV. The State duty to protect against abuse by business enterprises

23. Under pillar I of the Guiding Principles, States have a duty to protect individuals and communities from potential and actual business-related human rights abuses across sectors. As business enterprises can have a significant impact on almost all internationally recognized human rights, this duty is profound. Strong preventive measures are needed to prevent business-related human rights abuses alongside corruption, noting corruption's corollary effect on human rights. The Human Rights Council, in its resolution 41/9, stressed that preventive measures were one of the most effective means of countering corruption and of avoiding its negative impact on the enjoyment of human rights. It called for the strengthening of prevention measures at all levels, and underlined that one key aspect of preventive measures was to address the needs of those in vulnerable situations who might be the first victims of corruption. The preventive approach is embedded in the Guiding Principles.

A. Policy coherence

24. Given the interlinkages between corruption and business-related human rights abuses, States should give effect to greater coherence in policy integration. In the business and human rights and anti-corruption spaces, States encounter different norms and standards, for example the United Nations Convention against Corruption, the Guiding Principles, the OECD Guidelines for Multinational Enterprises and the OECD anti-bribery convention, as well as regional instruments such as the African Union Convention on Preventing and Combating Corruption. How States approach policy coherence when implementing their respective commitments is not always apparent. Both home and host States should do more to incorporate human rights impacts when addressing corporate corruption.⁵⁹ Similarly, any focus on responsible business conduct and human rights should include corruption-related factors.

⁵³ See [A/72/162](#), [A/HRC/41/43/Add.1](#) and [A/HRC/38/48/Add.1](#).

⁵⁴ See [A/HRC/41/43](#).

⁵⁵ See www.undp.org/content/dam/aplaws/publication/en/publications/womens-empowerment/corruption-accountability-and-gender-understanding-the-connection/Corruption-accountability-and-gender.pdf.

⁵⁶ See www.oas.org/es/cidh/informes/pdfs/CorrupcionDDHHES.pdf.

⁵⁷ See contribution from Sweden, and www.u4.no/publications/the-gendered-impact-of-corruption-who-suffers-more-men-or-women.

⁵⁸ [A/72/162](#), para. 82.

⁵⁹ See [A/HRC/35/33](#) and [A/HRC/38/48](#).

25. The OECD Guidelines for Multinational Enterprises are the only multilaterally agreed and comprehensive guidelines for responsible business conduct that Governments have committed to promoting. They include a chapter on human rights, built entirely on the pillar II of the Guiding Principles, and address corruption. Therefore, corruption and business and human rights form part of the same package of responsible business conduct. This applies to all multinational enterprises under the jurisdiction of countries adhering to the Guidelines (including several non-OECD-member countries). The OECD Due Diligence Guidance for Responsible Business Conduct supports the implementation of the Guidelines. The Guidelines present unified due diligence requirements for business on countering corruption and ensuring respect for human rights in line with the Guiding Principles. The main driver of anti-corruption activity at OECD, however, has been the Working Group on Bribery in International Business Transactions. That Working Group monitors the implementation and enforcement of the OECD anti-bribery convention and does not focus on human rights.⁶⁰ The Convention is open to non-members of OECD. The Convention and the Guidelines have influence beyond OECD members, including through various responsible-business projects.

26. In its guidance, the Working Group on the issue of human rights and transnational corporations and other business enterprises has highlighted that national action plans on business and human rights provide a tool to promote greater coordination and coherence on public policies that relate to business and human rights.⁶¹ It has stated that a national action plan is a point of departure and the beginning of a process of national action involving all relevant stakeholders, with the objective of transforming policy into practice.⁶² In its resolution 26/22, the Human Rights Council noted the important role that such plans could play as a tool for promoting the comprehensive and effective implementation of the Guiding Principles.

27. Given that such plans can serve as a powerful forward-looking instrument that can inspire new regulations and policies,⁶³ they could address both business and human rights and anti-corruption measures. Incorporating both topics into national action plans could lead to more coherent policy frameworks, signal integrated expectations of the private sector and generate programmes to prevent harmful conduct, especially in contexts with both human rights and corruption risks. Many States have dedicated national anti-corruption strategies. A first step would be for national action plans to cross-reference links between corruption and business-related human rights abuses.⁶⁴ For example, Italy, in its contribution, noted that its first national action plan on business and human rights contained several references to combating corruption, as did the revised 2018 version. The National Human Rights Commission of Bangladesh noted that including anti-corruption standards in a national action plan would enable better coordination.

28. Coherent guidance on respecting human rights and addressing corruption assists businesses operating overseas. The cross-government Business Integrity Initiative, initiated by the United Kingdom of Great Britain and Northern Ireland, helps international businesses guard against bribery, corruption and human rights abuses.⁶⁵ Support includes online guidance, the Business Integrity Consultancy Service, which provides advice on human rights and anti-corruption issues,⁶⁶ and funding for collective action initiatives. Support from diplomatic missions of the United Kingdom is being provided in Kenya, Mexico and Pakistan.⁶⁷ Similarly, the Directorate of National Taxes and Customs in Colombia trained its officials on ethics to ensure they would become defenders of State assets while fighting

⁶⁰ See www.oecd.org/corruption/anti-bribery/OECD-Anti-Bribery-Recommendation-ENG.pdf.

⁶¹ See www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf.

⁶² A/74/198, para. 17.

⁶³ Ibid.

⁶⁴ See <https://globalnaps.org/issue/corruption/>.

⁶⁵ See www.gov.uk/government/publications/anti-corruption-newsletter-summer-2019/anti-corruption-newsletter-summer-2019.

⁶⁶ See www.great.gov.uk/advice/manage-risk-bribery-corruption-and-abuse-human-rights/government-help-manage-risks-bribery-corruption-and-abuse-human-rights/.

⁶⁷ See contribution from the United Kingdom.

corruption.⁶⁸ Coordination between, and training for, relevant departments would help to ensure coherent and implementable policy. In 2018, the Financial Crimes Enforcement Network, under the United States of America Treasury Department, issued an advisory to United States financial institutions to “highlight the connection between corrupt senior foreign political figures and their enabling of human rights abuses”.⁶⁹ Several jurisdictions provide for targeted sanctions, asset freezes and visa denials for individuals who perpetrate gross human rights abuses and/or engage in corrupt acts.

B. Linked incentives

29. State departments and agencies that shape business practice or interface with business, as well as entities owned or controlled by the State, need to operate in a coherent, cogent, coordinated and carefully considered manner. States may need to address the human rights impacts of corruption by business actors when making decisions, for example, whether to provide businesses with government support such as trade finance. States can link incentives in procurement, trade and finance to human rights.

30. The Working Group has observed that, regarding trade and investment promotion, models exist to combat corruption and enhance business integrity. It has noted that such models could be adapted to encompass business respect for human rights, for example by embedding integrity commitments into contracts between trade promotion agencies and companies; any breach of the commitment would trigger negative consequences, such as the withdrawal of future trade support or other government services.⁷⁰ Asking companies to demonstrate commitments to ethical standards is nothing novel. States have made anti-corruption pledges a condition of trade-related support,⁷¹ and has conditioned lending on corruption-reduction efforts. In line with Guiding Principle 4, States should lead by example in their role as buyer, owner, investor and trade promoter, and help enable respect for human rights by business. Existing requirements should be expanded to incorporate respect for human rights and implementation of the Guiding Principles and the OECD Guidelines for Multinational Enterprises, alongside an anti-bribery pledge.

31. The pandemic-driven recession has caused Governments to provide relief and bailouts to business. States should ensure that businesses benefiting from State assistance respect human rights and are committed to transparency and accountability. Transparency International, Human Rights Watch and Global Witness have urged the International Monetary Fund to include transparency and anti-corruption measures in its coronavirus-related emergency relief programmes to ensure that funds received by States are used in a transparent and accountable manner that benefits the most vulnerable. The Government of Denmark has refused to provide financial assistance to companies located in offshore tax havens or who engage in share buybacks, and has asked companies to align their practices and tax practices with the Guiding Principles. The Working Group has urged States to consider respect for human rights as an essential requirement when offering businesses pandemic-driven support.⁷²

C. Policy reform to further anti-corruption and business and human rights objectives

32. While much anti-corruption reform has focused on criminal and non-criminal enforcement, allowing for greater investigation and prosecution of bribery and related offences, policy reforms should ensure that implementing commitments to combat corruption reflects both criminal justice and human rights.⁷³ Policy reform can promote stronger respect

⁶⁸ See contribution from Colombia.

⁶⁹ See www.fincen.gov/sites/default/files/advisory/2018-06-12/PEP%20Facilitator%20Advisory_FINAL%200508.pdf.

⁷⁰ A/HRC/38/48, para. 10.

⁷¹ *Ibid.*, para. 16.

⁷² See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25837&LangID=E.

⁷³ Contribution from Switzerland.

for human rights as well as prevent corruption. The following examples highlight policy reform that will further both objectives. These kinds of reforms provide both transparency and safeguards to address corruption, including in the sectors most open to abuse, such as the ones discussed above. These reforms were identified by experts and stakeholders during the Working Group's consultations.

Beneficial ownership reform

33. Many shell companies and trusts are registered while the true "beneficial" owner behind the shell, or corporate veil, is unknown. States and stakeholders have identified the use of shell companies and trusts as a means for corrupt officials and individuals to hide their assets and identities. The practice also allows anonymous businesses or individual investors to avoid liability for human rights abuses connected to a particular business or project. Shell companies have been connected to modern slavery and human trafficking.⁷⁴ Reform of beneficial ownership disclosure may help to counter corruption and promote respect for human rights, primarily by enabling transparency and accountability. This is because beneficial ownership disclosure rules can be misused to conceal the ownership and control of illicitly gained assets. Put simply, if one cannot know who is benefiting from an asset, how can one know whom to bring complaints, or legal cases against, and therefore seek remedy for harm caused? Similarly, how can one know whom to urge to take preventive measures?

34. Beneficial ownership reform would enable public awareness of an asset's true owner. During country visits, the Working Group met with communities facing severe human rights abuses caused by businesses but they did not know who truly controlled the company. Simply being told the name of a holding or shell company did not enable them to secure accountability or access remedy. One encouraging element on which to build is the pledge contained in the 2016 Anti-Corruption Summit communiqué to ensure that accurate and timely beneficial ownership information is accessible to those with a legitimate need for it.⁷⁵

35. Some States have embarked on combating financial secrecy and ending the formation of anonymous companies, which is encouraging. The Canada Business Corporations Act was amended to improve beneficial ownership transparency and consultations were launched on the possibility of a beneficial ownership public registry.⁷⁶ The Open Government Partnership's Beneficial Ownership Leadership Group, initiated by the United Kingdom, seeks to advance a set of best practice disclosure principles. Argentina, Armenia, Finland, Kenya, Latvia, Norway, Slovakia and Ukraine have made formal endorsements with regard to joining.⁷⁷ Decision makers and civil society actors working in human rights should explore links between beneficial ownership reform and the potential rewards for advocacy, accountability and the advancement of the business and human rights agenda.

Procurement reform

36. Methods exist to reform public procurement to more fully implement human rights obligations alongside anti-corruption obligations. The Working Group has recommended that human rights be integrated into guidance materials on public procurement and criteria for awarding contracts. Guidance should include steps required to conduct risk assessments and adopt appropriate measures at each stage of the procurement process.⁷⁸ All States should require businesses to respect human rights. The Working Group has observed that companies will often lose their right to participate in government procurement exercises if it is determined that they have engaged in bribery, and it recommended that a similar approach be explored with regard to human rights-related complaints.⁷⁹ Relevant information about

⁷⁴ See https://thefactcoalition.org/fact-sheet-anonymous-companies-and-human-trafficking/?utm_medium=policy-analysis/fact-sheets#_edn8.

⁷⁵ See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522791/FINAL_-_AC_Summit_Communique_-_May_2016.pdf.

⁷⁶ See www.ic.gc.ca/eic/site/142.nsf/eng/00001.html.

⁷⁷ See www.opengovpartnership.org/policy-area/beneficial-ownership/.

⁷⁸ A/74/198, para. 86 (k).

⁷⁹ A/HRC/38/48, para. 84.

convictions for corruption, and possibly human rights abuses, should be made available to contracting authorities to inform decisions on whether to suspend or exclude bidders.

37. Corruption in public procurement is still a major issue, but States have made progress in addressing it, for example through the Agreement on Government Procurement, a plurilateral agreement within the WTO framework. However, in terms of having a consistent approach to human rights in the context of public procurement, the international community is lagging behind. Having a consistent approach would help prevent harm to people and the economy.

38. A number of good practices were reflected in the contributions. One example is revising codes of conduct for suppliers, such that suppliers that tender for public procurement must comply with all applicable human rights and anti-corruption laws and must ensure that their own suppliers have robust processes to ensure that subcontractors in their supply chain comply with these laws.⁸⁰ Another is simplifying and digitalizing public procurement processes through e-procurement, which would improve efficiency. This could remove opportunities for companies to bribe public officials to circumvent bureaucratic requirements by eliminating the use of discretion by public officials. Such digitalization would also aid corruption detection by providing audit trails.⁸¹ The Partnering Against Corruption Initiative has considered how technologies such as blockchain-based procurement systems can assist. The Trafficking Victims Protection Reauthorization Act in the United States requires government agencies to work with corporations to ensure that their supply chains are free of materials produced using trafficked labour and that businesses do not contribute to trafficking linked to sexual exploitation. Ensuring compliance with the related Executive Order means that certain contractors and their subcontractors must have due diligence plans to prevent such trafficking, effectively requiring contractors to ensure that human rights due diligence is conducted within their supply chain.

39. Integrity pacts,⁸² in which a contracting authority and bidders agree to comply with best practice and maximum transparency, and a third party, often a civil society organization, monitors the procurement process against those commitments,⁸³ are key. They have been used in multiple government contracts, including engineering, architectural and consultancy contracts, State permits, licences and concessions, and in government-regulated sectors, supply contracts and construction contracts. A civil society organization or another independent monitor ensures the proper completion of projects and the legitimacy of bidding processes. Monitors can receive reports of potential unfair practices. Integrity pacts have been used by States in many regions. A chapter of Transparency International in Mexico has monitored over 100 contracts. Integrity pacts could be extended to include a commitment by bidding companies to respect human rights.

Expanding the scope of governance mechanisms

40. Multi-stakeholder governance mechanisms address corruption and transparency. Parallel mechanisms exist in the business and human rights arena. They address key sectors such as the maritime, extractive construction and sport sectors.⁸⁴ Governance mechanisms promoting accountability and transparency could assist other sectors.

41. Since corruption involving business often leads to human rights abuses, stakeholders should consider how a more integrated approach might prevent both kinds of harmful acts. When developing new governance mechanisms, or enhancing existing ones, efforts to implement the Guiding Principles should be incorporated into anti-corruption efforts. The Voluntary Principles on Security and Human Rights, which is both a set of principles and a

⁸⁰ See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf.

⁸¹ See www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf.

⁸² See https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/integrity-pacts/.

⁸³ See www.transparency.org/whatwedo/tools/integrity_pacts/5.

⁸⁴ See, for example, the Maritime Anti-Corruption Network (www.maritime-acn.org/) and the Infrastructure Transparency Initiative (<http://infrastructuretransparency.org/>).

multi-stakeholder initiative explicitly geared towards promoting respect for human rights, provides a good model.

42. The Extractive Industries Transparency Initiative promotes the open and accountable management of extractive resources, and its standard requires the disclosure of information along the extractive industry value chain, from how extraction rights are awarded, to how revenues are managed and allocated by government, and how they benefit the public.⁸⁵ In the 53 implementing countries, the Initiative is supported by coalitions of government representatives, companies and civil society actors. While it has been somewhat successful in advancing anti-corruption messages, one weakness is that some States facing corruption in the oil, gas and mining sector are not members of the Initiative.⁸⁶ The Initiative rightly states that while the costs of transparency to industry are low, the benefits can be substantial because transparency generates trust between stakeholders and local communities, enables better risk management and can improve a company's reputation through demonstrated accountability and leadership.

43. The Initiative has embedded governance requirements in its membership framework, including engagement with civil society and adherence to its civil society protocol. The Initiative should align its expectations and requirements for States and companies with the Guiding Principles, ensuring that both are committed to human rights, anti-corruption and transparency pledges.

Mandatory due diligence regulation

44. While anti-corruption commitments relate to national and international treaty-based legal requirements, respect for human rights is generally not a legal compliance matter. Companies engage in more robust due diligence and risk assessment as part of anti-corruption compliance because of the risk of legal liability for bribery, and the potential, in some jurisdictions, to mitigate sanctions by demonstrating adequate compliance. Human rights due diligence enables enterprises to manage potential and actual adverse human rights impacts in which they are or could be involved. Preventing adverse impacts on people is the main purpose of such due diligence. It concerns risks to people, not risks to business, which has been the focus of legalistic approaches to anti-corruption compliance. In April 2020, the Commissioner for Justice of the European Commission announced the Commission's commitment to introducing rules for mandatory corporate environmental and human rights due diligence.⁸⁷ Mandatory human rights due diligence would help to counter corruption and promote human rights.

45. The Working Group welcomed the *Study on Due Diligence Requirements through the Supply Chain*, produced for the European Commission,⁸⁸ which reinforced previous recommendations made by the Working Group, for example that States should use all available levers to address market failures and governance gaps to advance corporate human rights due diligence as part of standard business practice, ensuring alignment with the Guiding Principles, including by using legislation to incentivize due diligence, including through mandatory requirements.⁸⁹ One issue referenced in the contributions was whether mandatory human rights due diligence laws should include "safe harbours" or other liability defences, for situations in which a business conducts adequate due diligence and, nonetheless, a human rights abuse occurs within its operations.

46. Different jurisdictions address due diligence differently. Examples of national legislation includes the law on the corporate duty of vigilance in France, the Modern Slavery Act in the United Kingdom, and the law on child labour due diligence in the Netherlands.

⁸⁵ See https://eiti.org/document/eiti-standard-2019?utm_source=Media+Contacts&utm_campaign=9b18c6eed2-EMAIL_CAMPAIGN_2020_01_17_10_16_COPY_01&utm_medium=email&utm_term=0_6ae237370b-9b18c6eed2-.

⁸⁶ See https://eiti.org/files/documents/eitis_role_in_addressing_corruption_en.pdf.

⁸⁷ See www.business-humanrights.org/en/eu-commissioner-for-justice-commits-to-legislation-on-mandatory-due-diligence-for-companies.

⁸⁸ See www.ohchr.org/Documents/Issues/Business/WG/STM_welcome_EU_study_HRDD.pdf.

⁸⁹ A/73/163, para. 93.

Required approaches range from disclosure of whether due diligence occurs, to the broader French mandate for companies to undertake due diligence and develop “vigilance” plans, similar to compliance programmes.⁹⁰ Mandatory requirements for human rights due diligence, as a legal duty, introduced at the national or regional level, would force changes in corporate behaviour such that companies would carry out human rights due diligence for their own operations and supply or value chains. This would result in greater legal certainty, more level playing fields, increased leverage within value chains, and better integrated risk management. For these reasons, companies often call for consistent and comprehensive regulations. A survey of multinational companies based in the United Kingdom indicated that businesses would prefer stronger human rights and environmental legislation, mirroring corruption provisions in the Bribery Act of 2010, which made it an offence for a company to fail to prevent bribery.⁹¹ As mandatory standards induce greater compliance than voluntary ones, States should enact legislation requiring companies to conduct human rights and anti-corruption due diligence across their supply chains.

V. The corporate responsibility to respect human rights

47. Corruption risks in the operations of a business, relating to supply chains, partnerships or operation in States with prevalent corruption, mean that not only is there a risk of bribery occurring, either through a company or its agents or business partners, there is also a heightened risk of human rights abuses. Thus, businesses should be engaged in human rights due diligence alongside anti-corruption assessments. Similarly, a company’s approach to corruption can increase or decrease its likelihood of causing, contributing to or becoming linked to human rights abuses. The UN Guiding Principles Reporting Framework illustrates how companies can explain the links between the two issues.

48. Contributors in the Working Group’s consultation noted that companies could not avoid assessing corruption’s impact on human rights while conducting human rights impact assessments. In places where corruption is rife, companies need to consider human rights and anti-corruption measures as linked, for example, in situations where officials expected bribes to approve inspections, human rights abuses were also likely. In situations of grand corruption, where corruption may be endemic within a State or State institutions, businesses need to engage in enhanced due diligence to prevent corruption, and to identify the heightened risk of human rights abuses, given weak or corrupted political institutions and lack of rights protections.

49. While many companies have implemented anti-corruption compliance programmes to manage risk, responding to criminal laws against bribery and mitigating against sanctions, they have not done so in relation to human rights. This is often because of the absence of regulatory requirements. Anti-corruption compliance is largely a response to civil and criminal liability provisions, for example as contained in the Foreign Corrupt Practices Act in the United States and the Bribery Act in the United Kingdom, as well as in international conventions. The potential for liability leads companies to prevent, detect and respond to corruption across their operations. The anti-bribery approach that some companies follow embeds prevention at governance and decision-making levels to uphold standards of integrity across operations. Data indicate that business action is insufficient to address corruption. For example, enforcement actions under the Foreign Corrupt Practices Act, as well as the Corruption Perceptions Index of Transparency International, repeatedly feature examples of large-scale bribery.

50. Key actors, including OECD and the United Nations Global Compact, have called for a holistic, integrated approach to responsible business conduct. Companies have also done so, through their own codes of conduct. The existing instruments in this area presuppose integrated frameworks. The Ten Principles of the Global Compact emphasize that companies should operate in ways that meet fundamental responsibilities in respecting human rights and

⁹⁰ See <https://vigilance-plan.org/the-law/>.

⁹¹ See www.biicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms.

countering corruption.⁹² In its contribution, the Global Compact stated that, as companies faced similar risks from adverse human rights impacts and corruption, it encouraged businesses to identify synergies between human rights and anti-corruption compliance to meet their responsibility to respect human rights in a systematic and structured way, and embed respect for human rights in corporate culture. Despite this, and the similar approach taken by OECD, most businesses do not engage comprehensively in achieving the expected outputs.

51. Despite the expectations set by OECD and the Global Compact, businesses lag behind in the implementation of human rights due diligence processes alongside existing integrity and anti-corruption measures. As the Working Group has previously observed, according to recent human rights benchmarking and rating assessments, the majority of companies covered by the assessments did not demonstrate practices that met the requirements set by the Guiding Principles. This may indicate that risks to workers and communities are not managed adequately despite growing awareness and commitments.⁹³ However, encouraged by benchmarking initiatives, investor pressure, legal developments and trends toward transparency in corporate responsibility, good practices are emerging, for example clear recognition of what the risks to people are, and accurate descriptions of due diligence processes in place to address specific risks.⁹⁴ One researcher observed that building a meaningful case for integrity beyond mere compliance was a key focus of some anti-corruption compliance teams, who were focused on future-proofing their companies, enabling them to increase resilience through sustainable business practices.⁹⁵ The key point is that businesses should strengthen human rights due diligence processes alongside anti-corruption compliance efforts.

52. Not many companies are genuinely focusing on such alignment. This suggests that companies' anti-corruption efforts may not be equipped to capture risks to people, that is, negative impacts on human rights. The Partnering Against Corruption Initiative and the Global Future Council on Transparency and Anti-Corruption of the World Economic Forum are looking at what alignment should encompass by way of creating more resilient models for sustainable business.

53. Notwithstanding the above, companies have adopted good practices to reduce human rights and corruption risks by aligning their implementation of anti-corruption compliance programmes and human rights due diligence processes, including:

- (a) Incorporating human rights into anti-corruption procedures and ensuring an emphasis, including by senior business leaders, on a corporate culture of integrity;
- (b) Ensuring that lawyers and managers handling compliance and legal risks are aware of the Guiding Principles;
- (c) Ensuring that corruption and human rights risks are considered in employee onboarding systems;
- (d) Having standard codes of conduct or ethics adopted by the board, and ensuring the inclusion of contractual clauses (including in contracts with intermediaries) incorporating human rights and anti-corruption provisions;
- (e) Including human rights and corruption as areas covered in non-financial auditing;
- (f) Building capacity by including human rights in anti-corruption training;
- (g) Integrating the identification of human rights risk and the identification of anti-corruption risk;

⁹² See www.unglobalcompact.org/what-is-gc/mission/principles.

⁹³ A/73/163, para. 25.

⁹⁴ *Ibid.*, paras. 46–47.

⁹⁵ See <https://fcablog.com/2020/01/03/compliance-alert-anti-corruption-and-human-rights-efforts-will-converge-in-2020/>.

- (h) Incorporating corruption risks into human rights due diligence by engaging the company's compliance department;
- (i) Organizing sectoral peer-learning;
- (j) Integrating human rights considerations into whistle-blower and reporting mechanisms, including through hotlines and grievance mechanisms;
- (k) Implementing all applicable anti-corruption and human rights laws and standards during preparatory stages for the Olympics.⁹⁶

54. However, despite these good practices, challenges to aligned approaches persist. These include sustainability, supply chain and human rights departments on the one hand and legal and compliance departments on the other working independently in silos, focusing on, respectively, human rights and anti-corruption measures. Such a division has resulted in poor communication, diligence fatigue, a lack of shared objectives and challenging auditing processes where red flags were missed; a lack of coordination, sharing of information and collaboration within different parts of a business, for example between geographic offices and headquarters and between different departments; poor information-sharing and knowledge management regarding business and human rights and anti-corruption cases and issues; insufficient training, guidance and support on how to implement business and human rights responsibilities and anti-corruption measures alongside each other; and resistance from operations, weary from dealing with multiple interlocutors.

55. Contributors emphasized that there was no one-size-fits-all approach and no concrete trend towards companies developing single integrated compliance or risk frameworks covering both corruption and human rights. Alignment is not the same as integration. As some contributors noted, fully integrating anti-corruption and human rights due diligence could risk watering down core commitments to respect human rights. The goal of human rights due diligence is eliminating risks to people, and such due diligence is a values-driven endeavour. Since responsible business conduct focuses on corruption prevention and respect for human rights, it is key for corporate boards and managers to ensure that both priorities incrementally support a holistic corporate culture and management approach.

56. Contributors acknowledged that company codes of conduct and contractual requirements for suppliers and agents often have an integrated voice, linking anti-bribery obligations to measures respecting human rights. Likewise, other aspects of international regulatory and compliance diligence are integrated. Some sectors that raise concerns, such as the pharmaceutical and extractive sectors, have made headway in addressing corruption and business-related human rights abuses, but not necessarily in an aligned way. For example, they may have separate human rights and corruption working groups and trade associations. Practically speaking, in the anti-corruption context, diligence falls into several categories, including employee diligence, third-party (or transaction-related) diligence, mergers and acquisitions diligence and operational diligence, including anti-corruption risk assessments. Embedding human rights appears easier in some of those categories than others. For example, integrating human rights-related questions into baseline screening for potential employees and third parties (or for transactions), often on automated platforms, presents fewer challenges than embedding human rights in mergers and acquisitions or conducting operational assessments, which require greater expertise.

VI. Ensuring effective remedy

57. The Guiding Principles set out that States must take appropriate steps to ensure that victims of human rights abuses have access to effective remedy. While the Guiding Principles do not elaborate on the connection with corruption, the commentary to pillar III notes that procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome, and that States should ensure

⁹⁶ See <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Host-City-Elections/XXXIII-Olympiad-2024/Host-City-Contract-2024-Principles.pdf>.

that the provision of justice is not prevented by corruption of the judicial process. Institutions, judicial and non-judicial, should possess the powers, expertise and resources to provide adequate and effective remedies to victims of business-related human rights abuses that prevent, redress and deter actors from repeating abusive behaviour.⁹⁷

A. Corrupt behaviour as an entry point to seeking remedy for business-related human rights abuses

58. States and victims should be able to use corrupt behaviour as an entry point to seek remedy for business-related human rights abuses. There have been cases in France concerning Gabon and Equatorial Guinea.⁹⁸ Also, in January 2020, residents of the Democratic Republic of the Congo stepped forward as potential victims in the corruption investigation undertaken by the Serious Fraud Office of the United Kingdom into Eurasian Natural Resources Corporation, a multinational mining company.⁹⁹ Such cases deserve careful review; they may present a novel path to accessing remedy for business-related human rights abuses.

B. Judicial remedy

59. Judicial corruption, understood to mean any action intended to influence the impartiality and independence of judges and other actors involved in the administration of justice,¹⁰⁰ leads to a denial of remedy for rights holders,¹⁰¹ and is a systemic issue that has been studied widely. An independent and incorruptible justice system is fundamental in upholding the rule of law, monitoring public institutions and ensuring access to justice.¹⁰² Article 11 (1) of the United Nations Convention against Corruption places a duty on States parties to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. In cases concerning business-related human rights abuses, judges may have to interpret provisions in licences and concessions granted by a State, and contract awards following procurement processes. Having corrupt judges who are susceptible to bribes made by one of the parties to secure a favourable outcome would create a system of “zero-deterrence” impunity¹⁰³ where access to judicial remedy would be effectively unavailable.

60. As at March 2020, nearly 80 per cent of the 890 corruption cases concluded under the OECD anti-bribery convention had been settled through non-trial resolutions.¹⁰⁴ Nonetheless, judicial remedy remains an important prevention tool. In 2017, the Working Group underlined that there were many cases of successful cooperation to investigate and prosecute economic actors in areas closely linked to human rights, for example transnational bribery and corruption, and that those cases demonstrated that, with political will, States could work collectively to combat cross-border harm.¹⁰⁵ However, despite numerous allegations implicating businesses in human rights abuses and international crimes, investigations and prosecutions against companies were almost non-existent.¹⁰⁶ As this remains the case, law enforcement should increase criminal prosecutions in this area. Furthermore, offices of the attorney general, or their equivalents, should routinely consider the seriousness of any alleged

⁹⁷ See A/72/162.

⁹⁸ See www.asso-sherpa.org/ill-gotten-gains-gabon#.XpOWgjlJMs and www.asso-sherpa.org/equatorial-guinea-trial-casts-spotlight-on-scrappy-french-watchdog.

⁹⁹ See www.business-humanrights.org/en/drc-residents-step-forward-as-potential-victims-in-corruption-investigation-into-enrc-as-report-details-harm-caused-by-mine-closure.

¹⁰⁰ A/72/140, para. 47.

¹⁰¹ Contributions from Poland, Uganda and Human Rights Watch.

¹⁰² A/69/294, para. 41.

¹⁰³ Contribution from the International Justice Mission.

¹⁰⁴ See www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm.

¹⁰⁵ A/HRC/35/33, para. 6.

¹⁰⁶ *Ibid.*, para. 87.

corruption's impact on human rights as an aggravating factor in decisions concerning how to proceed with a case.

61. Judicial remedy may be found in civil courts. This might be an effective forum for obtaining a remedy, as under article 35 of the United Nations Convention against Corruption, States parties are required to open their courts to actions by victims of corruption against those responsible for the corruption in order to obtain compensation.¹⁰⁷ Seeking civil damages for corruption is a relatively recent phenomenon; it remains to be seen how domestic law will govern the establishment of causation and proving of damages, especially for harm to groups or communities. However, article 35 provides for such principles to be interpreted broadly, without the need for interaction between the perpetrator of corruption and the victim, or the need for a perpetrator to have foreseen the injury caused to the victim. The "hidden debt" scandal of Mozambique may be one case where victims can sue the perpetrators for civil damages in one of many States' courts,¹⁰⁸ possibly through a class action.

62. There have been calls for an international anti-corruption court to combat grand corruption and prevent human rights abuses.¹⁰⁹ Certain States have supported this. While deliberations continue, this should not detract from achieving judicial remedy.

C. Non-judicial remedy

63. The OECD Guidelines for Multinational Enterprises are supported by an implementation mechanism of national contact points. These are established by the adhering Governments to promote and implement the Guidelines and assist companies and stakeholders in furthering the implementation of the Guidelines. They also provide mediation platforms. National contact points may provide access to remedy in cases concerning corruption and business and human rights, but this is often undermined by incoherent policy, insufficient funding, lack of independence and inadequate training.¹¹⁰ Nonetheless, as at February 2020, national contact points had handled 35 cases relating to combating bribery, bribe solicitation and extortion.¹¹¹ Once the cases had been considered, the national contact points tended to focus on following up on human rights and labour issues. It is still instructive to see the overlaps and the relevance of corruption to cases lodged with national contact points. National contact points should build capacity with respect to the links between corruption and human rights. States should ensure that national contact points meet the functional equivalence criteria (visibility, accessibility, transparency and accountability) and provide them with adequate human and financial resources.

64. National human rights institutions are important in improving access to effective remedy for business-related human rights abuses. Building on its previous work,¹¹² the Working Group has initiated a project in this area.¹¹³ National human rights institutions can facilitate access to remedy indirectly, by raising awareness, building capacity, assisting rights holders and recommending legal reforms, and directly, by handling complaints concerning business-related human rights abuses. The National Human Rights Commission of Bangladesh reported that it had a close relationship with the Anti-Corruption Commission of Bangladesh and that the institutions engaged in mutual referrals. The Commission on Human Rights and Administrative Justice of Ghana performs multiple functions, including operating

¹⁰⁷ See https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Ramasastry.pdf.

¹⁰⁸ See <https://globalanticorruptionblog.com/2020/02/18/civil-damage-actions-for-corruption-possibilities-offered-by-the-mozambican-hidden-debt-scandal/>.

¹⁰⁹ See www.mitpressjournals.org/doi/abs/10.1162/daed_a_00507 and <https://humanrightscmission.house.gov/events/hearings/international-anti-corruption-court-iacc-mitigate-grand-corruption-and-human-rights>.

¹¹⁰ A/74/198, para. 42.

¹¹¹ See [https://mneguidelines.oecd.org/database/searchresults/?q=\(Theme:\(Combating%20bribery,%20bribe%20solicitation%20and%20extortion\)\)](https://mneguidelines.oecd.org/database/searchresults/?q=(Theme:(Combating%20bribery,%20bribe%20solicitation%20and%20extortion))).

¹¹² See A/72/162 and A/HRC/35/33.

¹¹³ See www.ohchr.org/EN/Issues/Business/Pages/ProjectOnRoleNHRIS.aspx.

as a national human rights institution, an ombudsman's office and an anti-corruption agency.¹¹⁴

D. Lack of remedy for those harmed by corruption

65. As noted above, the definition of who is a victim is open to debate. Corruption is not a victimless crime,¹¹⁵ yet focus on the people and communities that may bear the ultimate cost when a bribe is paid, the ultimate victims, is rare. Enforcement cases have not generally included reparations for those affected by corruption because they are often not classified as victims.¹¹⁶ In one instance, the victim was defined as the State or investor that lost assets, rather than individuals or communities that may have been affected when the bribe was paid.¹¹⁷ In another, the victim was the company that had suffered from the corrupt activities that had taken place within it.¹¹⁸ In another, a settlement included large payments to regulatory authorities but not to the people living with the day-to-day impact of the corruption.¹¹⁹ In its contribution, Human Rights Watch highlighted that victims of corruption included anyone whose rights the corruption had helped undermine. Legal definitions of victims are often much narrower. A definition of a victim that acknowledges the extent of the impact that corruption has on the enjoyment of human rights would greatly assist.

66. Courts have analysed article 35 of the United Nations Convention against Corruption, which allows “victims” of corruption to have a right of action against the perpetrator of the corrupt act that caused the harm. In some cases, courts have accepted broader notions of who can seek a remedy. For example, in France, Transparency International, as a French non-governmental organization, could initiate a civil action in a case involving assets allegedly misappropriated by the son of a leader of Equatorial Guinea. In Costa Rica, the State asked a multinational company to pay \$10 million as a remedy for “social damage”.¹²⁰ In cases involving the return of stolen assets, or payment of fines in bribery cases, civil society groups may seek to have those funds or fines used for the benefit of those harmed by the corruption.¹²¹

67. The Working Group reiterates that access to remedy should be available without discrimination.¹²² States should take appropriate affirmative action to provide access to effective remedy to marginalized or vulnerable groups who may be deprived of rights due to corrupt activities. As such, the definition of “victim” in the above-mentioned Serious Fraud Office investigation concerning Eurasian Natural Resources Corporation and the Democratic Republic of the Congo is noteworthy.¹²³

VII. Civil society participation and collective action

68. Civil society actors, including whistle-blowers, play a critical role in monitoring and reporting on corruption and business-related human rights abuses. They develop advocacy

¹¹⁴ See <https://chraj.gov.gh/news/anti-corruption-week-launched-in-accra-2/>.

¹¹⁵ See, for example, www.raid-uk.org/victimsofcorruption.

¹¹⁶ See, for example, https://sites.tufts.edu/ihs/reparations-for-corruption-how-corruption-enforcement-ignores-victims-rights/?utm_source=rss&utm_medium=rss&utm_campaign=reparations-for-corruption-how-corruption-enforcement-ignores-victims-rights; and <https://rwi.lu.se/app/uploads/2018/10/Nexus-report-online.pdf>.

¹¹⁷ See www.raid-uk.org/sites/default/files/raid-congosvictimsofcorruptionfullreportfinal.pdf.

¹¹⁸ See <https://globalanticorruptionblog.com/2020/04/10/the-continuing-controversy-over-the-destination-of-the-petrobras-penalties-the-coronavirus-crisis-has-ended-one-debate-but-may-start-another/#more-15803>.

¹¹⁹ See www.airbus.com/newsroom/press-releases/en/2020/01/airbus-reaches-agreements-with-french-uk-and-us-authorities.html.

¹²⁰ See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1779834.

¹²¹ See https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Ramasastri.pdf.

¹²² A/72/162, para. 25.

¹²³ See <https://inequality.org/research/investors-bribery-drcongo/>.

strategies highlighting the connection between corruption and human rights abuses and drive change.

69. Excellent examples of multi-stakeholder processes exist in both the anti-corruption area and the business and human rights area. National action plan development and monitoring processes should form a platform for effective multi-stakeholder dialogue. A multi-stakeholder approach is needed to embed change, and civil society should be involved in all efforts to implement the Guiding Principles. The commentary to principle 18 of the Guiding Principles clarifies that human rights due diligence should involve meaningful consultation with potentially affected groups and other relevant stakeholders, with consultation of human rights defenders and other civil society actors being encouraged when it is not possible to engage with stakeholders. The United Nations Convention against Corruption has clearer civil society engagement requirements. Article 13 (1) requires States parties to promote active civil society participation. This participation should be strengthened by such measures as enhancing the transparency of decision-making processes, ensuring that the public has effective access to information, undertaking public education programmes, and respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption (art. 13 (1) (a)–(d)). Civil society’s engagement regarding the Convention provides lessons for the implementation of the Guiding Principles, not least that the active participation of civil society is key.

70. Multi-stakeholder engagement is key to addressing the connected issues of corruption and business-related human rights abuses. The Global Compact and its Local Networks promote collective action through country-level anti-corruption projects that facilitate dialogue between the private and public sectors and promote ethical business performance.¹²⁴ Future collective action projects could include an integrated objective of preventing corruption and business-related human rights abuses.

VIII. Future directions

A. Joint activities within the United Nations

71. Coherent policy and joined-up approaches lead to better outcomes. Activities within the United Nations are no exception. OHCHR and the United Nations Office on Drugs and Crime (UNODC) cooperate through intergovernmental processes in Geneva and Vienna and in the field. Information is being exchanged and collaboration undertaken in specific areas, such as the collection of information, the organization of special events and participation in sessions of governing bodies, as well as in efforts to ensure that human rights and corruption issues are included in law enforcement training. The Human Rights Council, in its resolution 41/9, stressed the importance of policy coherence among the intergovernmental processes in Geneva, Vienna and New York on the issue of corruption and its impact on human rights. The Council invited OHCHR and UNODC, as the secretariat of the Conference of the States Parties to the United Nations Convention against Corruption, to exchange views and to keep each other abreast of ongoing activities to deepen the understanding of the nexus between corruption and human rights, as appropriate and within their respective mandates. The Working Group joins the Council in encouraging OHCHR and UNODC to work closely to further the connections between the business and human rights and the anti-corruption agendas. In its contribution, the International Chamber of Commerce highlighted the value of coordination between OHCHR and UNODC, at the Secretariat level, and among United Nations country offices. The special session of the General Assembly against corruption, scheduled to be held in 2021, will enable further collaboration between OHCHR and UNODC.

¹²⁴ See www.unglobalcompact.org/take-action/action/anti-corruption-collective-action%20and www.unglobalcompact.org/docs/publications/UN_Anti_Corruption_Brochure-2018.pdf.

B. Corporate capture

72. The phenomenon of regulatory or corporate capture is an emerging issue for business and human rights that deserves greater attention. How and when a corporation's influence on legislative and regulatory processes negates a decision maker's ability to act in the public interest has been subject of debate.¹²⁵ Civil society has underlined that corporations may exercise undue influence on legislative and regulatory processes to advocate for policy that undermines respect for human rights.¹²⁶ Whether corporate capture constitutes corruption is subject to discussion. Questions of illegality differ by State. The United Nations Convention against Corruption recognizes that certain kinds of influence are potentially prohibited. States have addressed lobbying, undue influence and corporate capture using means such as asset and income declarations, disclosure systems and conflict-of-interest rules.

73. During its country visits (for example to Brazil, Canada, Honduras, Kenya and Mexico),¹²⁷ the Working Group has explored corruption in public institutions and business, and potential corporate capture of the political process that could have an impact on human rights. The perception of corporate capture of regulatory and policymaking processes can generate suspicions that companies lack appropriate State oversight. Similarly, there may be concerns that politicians and high-ranking public officials may have close ties to the private sector through, among other things, investments and business dealings. Reform of conflict-of-interest laws and income and asset disclosure systems provide greater transparency in policymaking processes. Preventing private interests from exerting undue influence requires an increase in the transparency and independent oversight of political funding and decision-making.

74. Strong and clear conflict-of-interest laws can help to prevent corruption and instil trust in public institutions. They can also help identify situations where public officials and politicians may have ties to the private sector that could lead to decisions and legislation that negatively affect human rights. Under article 7(4) of the United Nations Convention against Corruption, States must endeavour to adopt, maintain and strengthen systems that prevent conflicts of interest. While various approaches exist, the Working Group has previously noted the importance of stronger conflict-of-interest regulation.

IX. Conclusions and recommendations

A. Conclusions

75. **The Working Group calls on States to move from policy to practice in relation to anti-corruption efforts, and to prevent and address business-related human rights impacts by fostering responsible business conduct. This requires cooperation across government and borders. The Working Group echoes the OHCHR promotion of a human rights-based approach to anti-corruption that puts the international human rights entitlements (the rights holders) and the corresponding obligations of the State (the duty bearer) at the centre of anti-corruption debate and efforts.**¹²⁸

76. **Lives may be lost when bribes are paid. The private sector is integrally involved and must do more to address the associated human rights abuses. For many companies, anti-corruption compliance teams and human rights teams are placed under different functions (for example, the legal or risk management department versus the corporate social responsibility or sustainability department). Companies should include human rights due diligence and implementation of the Guiding Principles as part of a larger programme of compliance, sustainability and responsible business conduct. This may involve integrating anti-corruption with human rights due diligence processes; at a**

¹²⁵ See <https://tobinproject.org/sites/tobinproject.org/files/assets/Introduction%20from%20Preventing%20Regulatory%20Capture.pdf>.

¹²⁶ See, for example, <https://ccrjustice.org/Corporate-Capture>.

¹²⁷ See www.ohchr.org/EN/Issues/Business/Pages/WGCountryVisits.aspx.

¹²⁸ See www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx.

minimum, it should involve alignment and recognition that both are key to responsible and sustainable business conduct. While there is no one-size-fits-all solution, the responsibility to respect human rights is the baseline requirement.

B. Recommendations

77. States should:

- (a) Provide technical assistance and resources to States lacking sufficient capacity to address corruption and business-related human rights challenges;
- (b) Break institutional silos to allow for, where appropriate, alignment of the implementation of the Guiding Principles with anti-corruption efforts, including regarding national action plans;
- (c) Introduce regulations that require human rights due diligence by business enterprises in line with the Guiding Principles, and provide guidance clarifying the connection between corruption and human rights risks and impacts;
- (d) Examine where they have required businesses to make integrity and anti-corruption pledges, for example in the context of trade promotion, and expand pledges to include respect for human rights and alignment with the Guiding Principles;
- (e) Examine where they have withdrawn trade or other government support from companies if they have been found to have engaged in bribery or corruption. States should also consider how similar withdrawal of support could cover circumstances of businesses causing, contributing to or being directly linked to adverse human rights impacts;
- (f) Promote greater policy coherence on combating corruption and business-related human rights abuses, including by integrating human rights due diligence and anti-corruption activities into public procurement;
- (g) Expand integrity pact processes to include requirements and monitoring focused on business respect for human rights and commitment to the Guiding Principles;
- (h) Reform administrative processes, such as those regarding land titling and administration, to address corruption and business-related human rights abuses;
- (i) Reform beneficial ownership laws to enable appropriate transparency of ownership of trusts and shell companies;
- (j) Facilitate multi-stakeholder platforms to promote processes preventing corruption and human rights abuses linked to business activity and strengthening monitoring and accountability;
- (k) Consider how governance mechanisms can be expanded to include respect for human rights;
- (l) Ensure adequate resources for national contact points and establish other non-judicial grievance mechanisms to provide remedies to individuals and communities affected by corrupt business practices. These should recognize the human rights abuses inherent in corrupt practices, and not exclude access to judicial remedies;
- (m) Explore avenues for addressing adverse human rights impacts resulting from business-related corruption, including appropriate legal frameworks and associated legal liability;
- (n) Examine how parties who suffer human rights abuses following corruption by business may gain access to reparations or remedy;
- (o) Tie pandemic-related financial support to robust commitments to anti-corruption efforts and respect for human rights, including the implementation of the Guiding Principles.

78. Businesses should:

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- (a) **Conduct human rights due diligence systematically, as part of their responsibilities under the Guiding Principles;**
 - (b) **Consider how addressing corruption risks and business-related human rights abuses with a risk-to-people approach rather than a risk-to-business approach could help drive a corporate integrity culture;**
 - (c) **Recognize that going beyond anti-corruption compliance and implementing human rights commitments is sound risk management and policy;**
 - (d) **Ensure that commitments to responsible business conduct and business ethics, which exist in corporate reports and partner/supplier contracts, are reinforced by policies, procedures and training focused on, and setting clear expectations regarding, preventing corruption and respecting human rights;**
 - (e) **Ensure that during the pandemic, and in its aftermath, human rights due diligence is used to identify and prevent human rights abuses, and develop tools and mitigation measures to prevent a recurrence of harm.**

79. **Civil society should:**

- (a) **Raise awareness about the respective obligations and responsibilities of States and businesses regarding corruption and under the Guiding Principles to prevent and address adverse business-related impacts on human rights;**
 - (b) **Document and raise cases of corrupt business practices and human rights abuses;**
 - (c) **Promote access to remedy and engage with mechanisms to address corrupt business practices;**
 - (d) **Engage in collective action through anti-corruption networks and multi-stakeholder initiatives and advocate for these to address business-related human rights abuses;**
 - (e) **Advocate for expansion of innovative anti-corruption mechanisms, such as integrity pacts, and explore an expanded role for civil society regarding human rights monitoring.**
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