1. The Castan Centre for Human Rights Law welcomes the opportunity to comment on how the United Nations system can contribute to the business and human rights agenda, and to the implementation of the Guiding Principles on Business and Human Rights in particular. This submission focuses on suggestions for incorporating the business and human rights agenda into state reporting processes and also into the work of thematic mandate holders. However, we strongly support the notion of mainstreaming the business and human rights agenda into the human rights work of all UN bodies and we recognise that there are many other areas in which that agenda could also be advanced.

**State reporting to existing mechanisms**

**The state’s duty to protect human rights**

2. Within the framework of the “protect, respect and remedy” approach on which the Guiding Principles are based, existing mechanisms in the UN human rights system are well suited to monitoring those responsibilities that fall on states. The state’s duty to protect human rights, extending to a duty to regulate business entities within the state’s jurisdiction to ensure that that business does not cause or contribute to human rights violations, has always been the least contentious aspect of the protect, respect, remedy framework. There is already capacity in those mechanisms that focus on the state’s implementation of its human rights obligations, including the Universal Periodic Review and the periodic state reports to the treaty-monitoring committees, to inquire into the state’s fulfilment of its duty to protect human rights in the course of business. States should be encouraged to report against their activities in protecting human rights in the context of business in their reports to the UPR and to the treaty-monitoring committees. The Guiding Principles act as an obvious reference point in assisting states to ascertain the scope of their responsibilities for that purpose.

3. The most problematic aspects of the duty to protect in the context of global business operations are the scope of extraterritorial obligations and the scope of a state’s responsibility for various elements of an enterprise based within different states (i.e. so-called “home state” responsibility). These are doctrinal questions beyond the scope of the present submission on which the Castan Centre’s academics have made contributions elsewhere.

4. For the purposes of reporting to the UPR and to the treaty-monitoring committees, states should be encouraged to detail those cases in which they have sought to regulate business entities operating outside the territory in relation to the protection of human rights, whether on the basis that the relevant entity was incorporated in that state’s territory, or controlled by another entity based in that state, or on some
other basis. That may include not only legislation, but also the imposition of standards placed on business entities operating overseas as a condition of state assistance such as export credit assistance, state subsidies or the like, or policy positions exerted through some other mechanism.

5. Civil society should be encouraged to raise the state’s duty to protect human rights in this way in its submissions to the OHCHR report for the UPR and in any shadow report prepared for treaty-monitoring committees. Civil society representatives may wish to draw attention to notable cases of human rights violations in the context of business operations, noting the involvement of the relevant states (host states and home states alike) and the extent to which the state’s duty to protect human rights was or was not met. In this way, states can engage in dialogue with the Human Rights Council and with the members of the treaty monitoring committees to better define the scope of the state’s duty to protect human rights.

6. Furthermore, discussion of the “bad cases” raised by civil society, and of the attempts of states to address such situations, in the context of state reports, has the potential to highlight the gaps of state responsibility for human rights that are inevitable in dealing with global business enterprises. In time, this may assist in refining the approach of international human rights law to the issue of business and human rights, advancing the project of the Working Group and the Special Representative.

7. In the case of the Universal Periodic Review, there is no reason in principle that the Guiding Principles could not be added to the list of instruments against which states are required to report, which currently includes the UN Charter, the Universal Declaration of Human Rights, the treaties to which the relevant state is a party and any voluntary undertakings of that state. The Guiding Principles are not themselves a source of law, but a tool to assist states in fulfilling their existing human rights obligations. Additional direction to report on the issue of business and human rights would therefore add nothing to state obligations, but assist in exploring accountability for this issue.

Business responsibility to respect

8. While businesses have no capacity to participate in state-based UN mechanisms, their responsibility to respect human rights can still be addressed. The treaty-monitoring committees in their Concluding Observations could identify specific cases in which violations of human rights have occurred in the context of business operations. The Concluding Observations could then direct recommendations to the relevant state to fulfil its duty to protect human rights, but also direct recommendations to relevant business enterprises directly, explaining how their
action or inaction contributed to the human rights violations and recommending remedial action and measures to prevent a recurrence of human rights violations in the future. Such business-focused recommendations would obviously be of a different character to the recommendations directed towards states, as the latter are the committee’s interpretation of the state’s obligations under the relevant treaty. However, addressing them as part of the same process would be a useful contribution, recognising the holistic nature of human rights responsibilities in a global economy.

**Special procedures – thematic mandates**

9. Special rapporteurs working under thematic mandates have the capacity to investigate complaints of business involvement in human rights violations related to their mandate. Through that process, rapporteurs have the capacity to inquire into specific instances and to liaise directly with the purported victims, the relevant corporations and the relevant governments in a way that is not possible for the Human Rights Council or the treaty monitoring committees.

10. Some mandate holders have already undertaken inquiries along these lines in carrying out their mandates. All mandate holders should now take the business responsibility to respect human rights, and the state responsibility to protect human rights in the business context, into account as a matter of course.

11. The thematic mandate holders will necessarily be limited in their capacity to consider large numbers of complaints or to provide a permanent or systematic presence in any given state. They are also constrained in their inability to provide a concrete remedy to victims. Nevertheless, their engagement with business and human rights issues as a standard part of their mandates will provide a benefit in raising awareness of the Guiding Principles and the responsibilities that underpin them, and it will also assist in mainstreaming the concept of business responsibility for human rights into UN human rights activities.

**Conclusion**

12. The Castan Centre for Human Rights Law strongly supports the mainstreaming of business responsibility for human rights and the responsibilities of both home and host states for human rights in the business context into the human rights monitoring and enforcement mechanisms of the UN.

We have made some suggestions here for ways to incorporate business and human rights concerns into the roles of existing mechanisms without requiring any significant changes. However, the more pressing problem posed by the protect,
respect, remedy framework is the final limb: access to a meaningful and enforceable remedy for human rights violations in the course of business operations. The development of mechanisms capable of providing such remedies, and the jurisdictional problems that such mechanisms pose in a global economy, needs to be a priority for the Working Group.

About the Castan Centre for Human Rights Law

The Castan Centre for Human Rights Law is an academic centre based in the Faculty of Law at Monash University, Melbourne, Australia, established in 2000. The Castan Centre seeks to promote and protect human rights through the generation and dissemination of public scholarship in international and domestic human rights law.

In pursuit of this mission, the Centre brings the work of human rights scholars, practitioners and advocates from a wide range of disciplines together in the Centre's key activities of research, teaching, public education (lectures, seminars, conferences, speeches, media presentations, etc), applied research, advice work and consultancies.