

**Presentation of Report to United Nations Human Rights Council  
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for Business and Human Rights  
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Mr. President, Excellencies, Ladies and Gentlemen,

In this, my final presentation as Special Representative, I am pleased to report that multilateralism works. Human Rights Council Special Procedures can make a significant difference even where discord and contention once prevailed.

My mandate on business and human rights began in 2005 amidst divisive debates among stakeholders and little consensus among States. In contrast, just three years later this Council was unanimous in welcoming the “Protect, Respect and Remedy” Framework I had developed, and which stakeholder groups fully supported. It consists of the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others, and to address adverse impacts that occur; and greater access for victims to effective remedy, both judicial and non-judicial.

The Framework addressed the “what” question: what do States and business enterprises need to do to ensure business respect for human rights. Today, at your request, you have before you a set of Guiding Principles that address the “how” question: how we move from concept to practical, positive results on the ground.

Permit me to summarize the main features of the Guiding Principles, describe the current state of play, and then offer some thoughts on possible next steps.

The Guiding Principles' normative contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved. They do so under each of the Framework's three pillars: Protect, Respect and Remedy.

The Guiding Principles indicate the general regulatory and policy means by which States should foster business enterprises' respect for human rights throughout their operations; additional steps States should take where they own enterprises or provide them with substantial support and services; the role of States in assisting enterprises to assess and address the heightened risk of involvement in human rights abuses in conflict affected areas, but also taking stronger measures as the situation may demand; and the need for States to consider their human rights obligations when entering into international economic arrangements such as investment agreements, which can subject States to binding international arbitration.

For business enterprises, the Guiding Principles outline a human rights due diligence process. This entails assessing actual and potential human rights impacts; integrating and acting upon the findings; tracking the effectiveness of responses; and communicating how impacts are addressed. Human rights due diligence is meant to include dealings with third parties linked to the business enterprise.

The Guiding Principles also address ways to ensure greater access to effective remedy by those whose human rights are adversely affected by business enterprises. They underline the need to address legal and practical barriers that victims face in accessing judicial remedy; and they recommend steps for strengthening State-based non-judicial mechanisms, as well as for enterprises to create or cooperate in effective operational-level grievance mechanisms.

In short, the Guiding Principles provide comprehensive recommendations addressed to States as well as business enterprises, comprising prevention as well as redress, and they constitute a set of benchmarks for all stakeholders.

Mr. President,

This Council recognized the need for a coherent set of ground rules in the area of business and human rights. And now we are witnessing significant global convergence around a UN initiative.

Just last week, Ministers from the 42 countries that adhere to the OECD Guidelines for Multinational Enterprises adopted an update that for the first time includes a human rights chapter. The OECD Secretary-General stated: “The new human rights recommendations benefitted greatly from the work of the UN Special Representative on business and human rights and are in line with the Guiding Principles on Business and Human Rights.”

Earlier this month, the Board of Directors of the International Finance Corporation approved an update of the IFC’s Sustainability Framework, which includes performance standards for clients in managing their social and environmental risks. For the first time, the IFC specifically references the business responsibility to respect human rights. IFC policy affects not only its own investments and advisory services, but also forms the basis of the Equator Principles, a benchmark used by 72 other financial institutions worldwide.

Late last year, the International Organization of Standards adopted a new social responsibility standard, ISO26000, which includes a human rights chapter. Here, too, the mandate has been described as playing a decisive role in establishing the baseline responsibility of organizations to respect human rights, and introducing human rights due diligence as the appropriate means for organizations to know and show that they respect rights. The new

standard was adopted with the support of 94 percent of ISO national member bodies.

In addition, scores of individual companies, corporate law firms and institutional investors have taken the unusual step of issuing public statements of support for the Guiding Principles and encouraging the Council to endorse them. The many countries represented range from Brazil and Colombia to India, Malaysia and South Africa; from France and the United Kingdom to the Russian Federation and the United States of America.

The International Trade Union Confederation has written that the 2008 Framework “changed the entire discussion on human rights and business in a positive way. We see the Guiding Principles as the next important step at the international level.” That view is shared by the world’s largest international business associations, including the International Organization of Employers and International Chamber of Commerce. In a joint statement, they ask the Human Rights Council “to endorse the Guiding Principles as the basis for the ongoing and progressive implementation of the UN [Protect, Respect and Remedy] Framework.”

For their part, leading international human rights organizations have submitted a statement to the Council in which they “recognize the progress” the mandate has achieved; and many are actively using the Framework and Guiding Principles in their own reporting and advocacy. Finally, several Human Rights Council Special Procedures and other UN entities have drawn on both the substance and methodology of this mandate in conducting their own work.

Mr. President,

On the challenging journey that started in 2005, and which now nears a destination I could not then imagine, I have had many partners and been welcomed in many places. We would not be where we are today without their generosity of spirit and their commitment.

A special thanks goes to the mandate's co-sponsors – Argentina, India, Nigeria, Norway and the Russian Federation – for their steadfast leadership and support.

With help from all stakeholder groups, the mandate convened 47 international consultations, on every continent. Members of my team and I made more than 20 site visits to business operations and communities, learning from the diverse experiences of affected individuals and groups, local leaders, civil society and company representatives. Expert volunteers provided analyses and advice from all regions. More than two dozen law firms from around the world conducted pro bono research for the mandate. Several companies undertook extensive pilot projects involving workers and communities to inform the mandate's recommendations on grievance mechanisms; others tested the workability of the human rights due diligence requirements. Government officials in capitals hosted bilateral visits. Finally, the draft Guiding Principles I released last November were thoroughly vetted by governments in an informal Council consultation and in written submissions, while an online consultation attracted comments and suggestions from individuals and institutions in more than 120 countries.

In sum, the process of generating these Guiding Principles has been intensely consultative and rigorously evidence-based, not driven by doctrinal preferences. That is how we got here. Now the attention shifts to the next phase.

The matter of how best to follow up on this mandate is in your good hands. But before I conclude, may I be permitted to make three observations based on lessons learned along the way.

First, capacity building should be a central component of any follow-up activity. Currently there is no dedicated mechanism in the United Nations for providing systematic advice and on-the-ground assistance on business and human rights. Such an effort is needed,

and it should focus in particular on the particular challenges faced by developing countries and small and medium-sized enterprises.

Second, any follow-up activity should retain a meaningful multi-stakeholder dimension. The magnitude and complexity of the challenge requires it. In the case of my mandate, multi-stakeholder engagement also provided enormous benefits in mutual learning and in the broad range of ownership and support the Guiding Principles now enjoy. The same will be true going forward.

Third, some are advocating that the next phase should include a binding international legal instrument. I agree that the law must continue to evolve and keep pace with – indeed to guide – socio-economic changes and normative aspirations. Nevertheless, I fear that any attempt to squeeze all elements of business and human rights into an all-encompassing international legal instrument would quickly take us back to the contentious pre-2005 days, and thus be counterproductive.

However, a multilateral approach to providing greater legal clarification may be warranted in response to the diverging national interpretations of the applicability to business enterprises of international standards prohibiting ‘gross’ human rights abuses, possibly amounting to the level of international crimes. Such abuses tend to occur most frequently in areas where the human rights regime cannot be expected to function as intended, such as armed conflict or other situations of heightened risk. Diverging national interpretations can only lead to increasing uncertainty for victims and businesses alike, while posing difficult dilemmas for States themselves, including the potential for jurisdictional conflicts.

Mr. President, Excellencies, Ladies and Gentlemen,

I am under no illusion that the conclusion of my mandate will bring all business and human rights challenges to an end. But Council endorsement of the Guiding Principles will mark the end of

the beginning. Therefore, I very much hope that the Council seizes the opportunity provided by the remarkable consensus and convergence of approaches that has been achieved, endorse the Guiding Principles, and then build on this solid foundation, step by step, in the years ahead.

Human rights are at stake – and so, too, is the social sustainability of enterprises and markets as we know them.

It has been an honor to serve you – and this critically important cause – for the past six years.

Thank you.

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