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

Summary

In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises provides an overview of key observations and messages emerging from the ninth Forum on Business and Human Rights, held virtually from 16 to 18 November 2020. The theme of the ninth session of the Forum was “Preventing business-related human rights abuses: the key to a sustainable future for people and planet”.



I. Introduction

1. Since its first session in 2012, the Forum on Business and Human Rights has become the world's biggest event on business and human rights. It was established by the Human Rights Council in its resolution 17/4, in which the Council also endorsed the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex). The mandate of the Forum is to discuss trends and challenges in the implementation of the Guiding Principles; to promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors or operational environments, or in relation to specific rights or groups; and to identify good practices.
2. The Forum is organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and guided and chaired by the Working Group on the issue of human rights and transnational corporations and other business enterprises. The present report was prepared by the Working Group in accordance with Human Rights Council resolution 44/15, in which the Council invited the Working Group to submit a report on the proceedings and thematic recommendations of the Forum to the Council for its consideration.
3. The programme of the Forum included 2 plenary sessions and 26 parallel sessions organized by the Working Group, OHCHR and external partners.¹ In the present report, the Working Group provides a broad overview of the Forum and the key messages emerging from the discussions that took place over the three days. It should be read together with the programme, session concept notes, statements and session web recordings, which are available on the website of the Forum.² Due to the coronavirus disease (COVID-19) pandemic, the Forum was held using a virtual format.
4. The theme of the Forum was "Preventing business-related human rights abuses: the key to a sustainable future for people and planet". The human rights and economic consequences of the COVID-19 pandemic crisis coming on top of other severe global challenges, such as the climate crisis and growing economic inequality, provided the context for the discussions. Emphasis was put on identifying actions so that States and business actors do not revert to business as usual, but recover responsibly from the current crisis and beyond.
5. The programme included sessions dedicated to trends, challenges and emerging practices in each of the United Nations regions, as well as those related to some specifically vulnerable groups and sectors, such as migrant workers, indigenous people and the informal sector. It also included a number of thematic sessions dedicated to specific issues, including the connection between the climate crisis and business and human rights; the key role of human rights defenders; the alignment between the business and human rights agenda and the anti-corruption agenda; ways in which to better prevent and address business-related human rights abuses in conflict-affected settings; the challenges and the way forward for companies in preventing and addressing xenophobia and racism; and efforts to improve access to effective and gender-responsive remedy for victims of business-related human rights abuses. As 2021 also marks the tenth anniversary of the Guiding Principles, the Forum also contributed to the Working Group's Guiding Principles 10+ project, looking to identify

¹ Asia Indigenous Peoples Pact, Asian Forum for Human Rights and Development, Business and Human Rights Lab at the Yaroslav Mudryi National Law University in Ukraine, Business and Human Rights Resource Centre, European Coalition for Corporate Justice, Forest Peoples Programme, Front Line Defenders, Global Alliance of National Human Rights Institutions, Indigenous Peoples' Center for Documentation, Research and Information, Indigenous Peoples Rights International, International Federation for Human Rights, International Labour Organization, International Service for Human Rights, International Work Group for Indigenous Affairs, Migrant Forum in Asia, Migrant-Rights.org, OECD Watch, Oxfam, the Permanent Mission of Ecuador to the United Nations Office and other international organizations at Geneva (Chair-Rapporteur of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights), Peace Brigades International, Polish Institute for Human Rights and Business, Publish What You Pay, Shift Project, Swedwatch, The B Team, United Nations Development Programme.

² www.ohchr.org/EN/Issues/Business/Forum/Pages/2020ForumBHR.aspx.

progress and challenges in implementing the Guiding Principles over 10 years and develop a vision and road map for scaling up implementation over the course of the next decade.³

6. More than 4,000 participants from 140 countries and a wide range of backgrounds registered for the Forum (see table below). In addition, a number of other people from around the world followed the live stream of the Forum sessions. The virtual format helped to ensure that an even wider and more diverse range of stakeholders from all regions could follow and participate in the sessions.

<i>Category of participating stakeholders</i>	<i>Percentage</i>
Academic institutions	13
Civil society organizations, affected stakeholders, trade unions and indigenous peoples' groups	24
Multi-stakeholder initiatives	2
National human rights institutions	3
Private sector (business enterprises, business/industry associations, consultancies, law firms, investors)	30
States	8
Trade unions	1
United Nations entities/intergovernmental organizations	9
Other	10

7. The Forum opened with a plenary session that convened senior leaders from the United Nations and other international organizations and Governments from different regions. It sought to provide inspiration and help set the tone for a constructive and solution-oriented dialogue over the three days of the Forum.⁴

II. Key messages from the opening plenary session

8. The plenary session was opened by the United Nations High Commissioner for Human Rights, the President of the Human Rights Council and the Chair of the Working Group. In their opening remarks, they recognized the extraordinary and difficult situation caused by the pandemic, which had affected the situation for human rights worldwide. At the same time, they welcomed the extended virtual presence of Forum participants from around the world.

9. The High Commissioner expressed concerns about the current grave challenges, including the health pandemic, inequality, structural discrimination and misinformation and the accelerating climate emergency. She also expressed concern about Governments using anti-COVID measures to suppress dissent and introduce restrictive measures that curtailed human rights and fundamental freedoms. She pointed to unprincipled business practices, which continued to generate preventable and unacceptable human suffering during the time of COVID-19, affecting especially workers and indigenous peoples. She noted the disproportionate impact of the COVID-19 crisis on women and the fact that throughout supply chains those employed in the informal sector were facing particular hardships due, in part, to a lack of social protection. The High Commissioner emphasized the importance of multi-stakeholder collaboration to build a better future.

10. The President of the Human Rights Council pointed out that the global economy was increasingly interdependent. While States still had borders, businesses, platforms and the gig economy had learned to operate beyond those borders most of the time and the big challenge remained to avoid engaging in a race to the bottom with regard to human rights. She noted

³ See www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRsnext10.aspx.

⁴ See <http://webtv.un.org/search/high-level-plenary-forum-on-business-and-human-rights-2020/6210118752001/?term=&lan=english&cat=Meetings%2FEvents&page=3> and www.ohchr.org/EN/Issues/Business/Forum/Pages/2020_BHR_Statements.aspx.

that the increasing change from physical to digital markets had also changed the world of work and that this required an analysis of what labour standards the new world needed. The President emphasized that the COVID-19-pandemic had proved to be a “magnifying glass” for many previously existing human rights problems, such as health and economic issues – in particular in the case of vulnerable and marginalized groups. She stressed that the Forum provided an excellent opportunity to talk about the opportunities ahead and to showcase best practices and practical solutions that could help people on the ground.

11. The Chair of the Working Group stated that the Guiding Principles were a key tool for the prevention of negative human rights impacts and as a result were essential to a strategy for a resilient recovery. She pointed out that the pandemic crisis had highlighted the vulnerability of many people in workforces and value chains around the world and expressed concerns about rising xenophobia and racism in business, as well as the ongoing climate and environmental crises, the shrinking civic space, populism, corruption, conflict and fragility and the as yet unknown human consequences of technological disruption.

12. The Chair of the Working Group also stated that 2021 would mark the tenth anniversary of the Guiding Principles, which would allow the Working Group to present its stocktaking report to the Human Rights Council in June 2021 and its road map for the next decade.

13. The Chair of the Working Group noted that while the Guiding Principles concept of corporate human rights due diligence was already at the centre of regulatory developments in Europe, it needed to be acknowledged that the governance gaps that had created the need to develop business and human rights still allowed too many instances of business-related abuses across all sectors and regions. Such abuses included forced labour across global supply chains, violent attacks and legal harassment of human rights defenders, including union representatives, or the deaths of workers who had not been provided with proper equipment during the COVID-19 pandemic. She also noted that prevention of business-related human rights abuses remained inconsistent and access to remedy for business-related harms was still a major and urgent challenge, and that while the key standards for responsible business were closely aligned with the Guiding Principles, policy coherence was still a formidable challenge. The Chair concluded by setting out some key drivers of change identified by the Working Group, including the mandatory dimension of the “smart mix” prescribed by the Guiding Principles, government action regarding mandatory human rights due diligence initiatives and the role, responsibility and leverage of the financial system in ensuring respect for human rights.

14. The former High Commissioner for Human Rights and Chair of The Elders, Mary Robinson, delivered a keynote speech in which she highlighted the emerging recognition that business had a vital role to play as a positive force in ensuring climate justice, focused on just transitions to more sustainable economies. At the same time, she pointed out that commitments to human rights action remained far too slow and still by far too few. She called on business leaders to step up and meet the moment by speaking out more forcefully and on industry associations to demand that Governments look beyond perceived short-term interests and put in place regulatory environments that would protect the planet and future generations, and recognize that the business sector too must be accountable for its actions. She also called on investors to take greater steps to accelerate the shift to responsible and sustainable business models and move away from long-term investment in fossil fuels and other sectors that were not sustainable. She also emphasized the role of human rights defenders, reminded participants about the shrinking civic space around the world and recalled the importance of press freedom and trade union movements that continued to face serious threats.

A. Policy coherence at international level

15. The keynote speech was followed by a plenary session on global governance and policy coherence that gathered together a panel of senior leaders from the United Nations, including the Assistant Administrator and Director of the Crisis Bureau of the United Nations Development Programme (UNDP), the Director of Programmes of the United Nations

Children's Fund (UNICEF), the Director-General of the International Labour Organization (ILO), the Chief Executive and Executive Director of the United Nations Global Compact, and from other international organizations, including the Chair of the Working Party on Responsible Business Conduct of the Organization for Economic Cooperation and Development (OECD), which works to promote responsible conduct and sustainability. The key goal of the panel was to reinforce calls on Governments and businesses to implement their respective human rights duties and responsibilities in the current crisis and beyond, and to demonstrate how international organizations were supporting them to move forward in the current context. The panellists acknowledged unanimously the devastating effects of the COVID-19 crisis and stressed the need for joint commitment and engagement to build back better.

16. Speakers noted that the COVID-19 crisis showed that most companies had not moved beyond the policy commitment stage and that there was a gap between business aspiration, business ambition and true business action on human rights. Regarding the challenges created by the pandemic crisis, speakers underlined the resulting fragility and insecurity, the significant impact of the crisis on children, including the increase in child labour and the deteriorating situation of forced labour and discrimination in the workplace. They pointed out that the crisis offered all stakeholders a new opportunity to do better by entering into meaningful partnerships, ensuring a fairer and more inclusive distribution of benefits and investing in preventing societies from descending into further crises.

17. Speakers equally emphasized that for a responsible and resilient recovery based on proper implementation of the Guiding Principles, a smart mix of voluntary and mandatory policy and regulatory measures needed to be adopted at both national and international levels, building trust between stakeholders needed to take place and clear, coherent and credible standards needed to be established that would put people and the planet at the core.

B. European Union and Governments

18. The plenary session on policy coherence at the international level was followed by a panel of senior representatives of regional organizations and of Governments from different regions (Costa Rica, Germany, Japan, the Netherlands, Qatar, Ukraine and the European Union) to share experiences and lessons learned from their efforts to implement the Guiding Principles, including in the context of the response to the COVID-19 pandemic and recovery efforts.

19. The Commissioner for Justice of the European Union, Didier Reynders, pointed out that people without safety nets in the informal sector had been badly hit by COVID-19 and he emphasized the need to protect and respect human rights when building back from the crisis to ensure that economies become more resilient. The Commissioner stated that in 2020 the European Union had adopted its first strategy with an international dimension on the rights of victims and that in 2021 it would adopt a proposal on sustainable corporate governance, obliging companies to put in place processes to identify and mitigate environmental, social and human rights risks across their supply chains and introducing a mandatory due diligence system across the European Union.⁵ The Commissioner emphasized that the world needed a new global business model that was more equal, just, sustainable and resilient.

20. Among other issues discussed, the representative of Ukraine acknowledged that the COVID-19 crisis had hit health-care systems hard; the representative of Japan that it had had a negative effect on labour conditions; the representative of Costa Rica that it had aggravated poverty and exclusion; and the representatives of the Netherlands and Qatar that the consequences of human rights violations related to business had mostly been borne by the most vulnerable groups, such as women, the elderly and migrant workers. For the post COVID-19 recovery, the representative of Germany stressed the need for mandatory rules on business and human rights. The government representatives reaffirmed their commitment to implementing the Guiding Principles and agreed that companies could not resort to business

⁵ See [www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI\(2020\)659299_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI(2020)659299_EN.pdf).

as usual (the steps presented by the government representatives on national legislation and national action plans are summarized in section III below).

C. Multi-stakeholder dialogue

21. The plenary session was followed by a discussion of the power of joint and multi-stakeholder efforts to contribute to the prevention of business-related abuses between the General Secretary of the International Trade Union Confederation, the President of the International Federation for Human Rights, the Secretary-General of the International Organisation of Employers, the Secretary-General of the International Chamber of Commerce and a senior researcher from the Centre for Research on Multinational Corporations and OECD Watch.

22. During the discussion, participants highlighted the consequences of the COVID-19 crisis, particularly with regard to its impact on workers in the informal sector, the lack of social protection and the increase in forced labour and child labour in supply chains. Regarding identification of the paths forward for a responsible recovery, speakers noted the importance of effective and meaningful multi-stakeholder dialogue, followed up by action.

23. With respect to regulatory measures, while some speakers noted the value of the existing regulatory framework at international and national levels, others called for more collective efforts to achieve mandatory human rights due diligence, effective accountability and access to effective remedy through a smart mix of international and national voluntary and legally binding instruments. Speakers also noted that Governments and businesses should address issues such as respect for freedom of association and collective bargaining, that human rights due diligence needed to be more efficiently anchored in business behaviour and embedded in the entire value chain, and that businesses needed an enabling environment, more incentives and stronger supervisory mechanisms.

24. In the following sections a number of key issues considered during the sessions and discussions held in the course of the Forum are covered.⁶

III. State action related to the COVID-19 crisis: how to “build back better”

A. Regulatory and policy developments

1. National legislation and national action plans

25. Recent regulatory and policy developments in States that were highlighted during the Forum included:

(a) Laws with broad human rights due diligence provisions for companies of a certain size, with “cascade effects” that would affect subsidiaries as well (including the law on the duty of vigilance in France);

(b) Laws geared towards improving transparency with regard to how companies address specific human rights risks, namely legislation aimed at preventing goods and services produced with forced or child labour being delivered to consumers (for example, the Modern Slavery Act in Australia, the criminalization of forced labour in Poland, the draft child labour due diligence law in the Netherlands and the Tariff Act of the United States of America);

(c) Plans to introduce mandatory national human rights due diligence legislation with monitoring processes (notably in countries including Finland, Germany, the Netherlands, Norway, Mexico, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland);

⁶ See <https://2020unforumbhr.sched.com/grid/>.

(d) New national action plans or ongoing efforts to publish national action plans on business and human rights (notably the recently published national action plan in Japan, ongoing consultation or drafting processes in Azerbaijan, Brazil, Ghana, Latvia, Malawi, Mexico, Mongolia, Mozambique, Namibia, Nigeria, South Africa and the United Republic of Tanzania, and revision of already published plans in Belgium, China, Colombia, Germany, Lithuania and the Netherlands);

(e) Analysis of the implementation of national action plans (for example, an analysis of implementation in Germany and implementation under revision in Slovenia);

(f) A chapter on business and human rights in national action plans on human rights (already introduced in Mexico and Morocco and under development in Ukraine).

26. The Forum sessions and discussions also covered issues related to the implementation of national legislation and national action plans on business and human rights.

27. An analysis of the implementation of due diligence legislation in France, Australia and the United States showed that the respective laws could be further improved to include stronger and more enforceable measures on corporate liability, grievance mechanisms, remediation processes and sanctions. An independent review of business and human rights-related legislation in several jurisdictions in the Group of Western European and Other States, carried out by the University of Nottingham, United Kingdom, suggested that there were significant differences related to their scope of application, that they lacked effective remedy mechanisms and remediation processes and that whereas the duty to disclose for businesses was included, the duty to act was often missing.

28. As an example of the implementation of a national action plan, Germany presented the results of a survey carried out between 2018 and 2020 on the due diligence implementation of its national action plan by enterprises with more than 500 employees based in Germany, which showed that fewer than 20 per cent of the enterprises surveyed had incorporated the human rights due diligence criteria by 2020. The results led to a decision by the Government of Germany to develop mandatory legislative measures at the national and European Union levels.

29. Participants noted the need for better implementation of the Guiding Principles and that it was clear that an effective “smart mix” of measures must include both voluntary and mandatory options, at national, regional and international levels. With regard to mandatory measures at the international level, the Forum agenda included sessions to discuss the upcoming mandatory due diligence legislation of the European Union and the United Nations legally binding instrument on business and human rights currently under development.

2. Mandatory human rights due diligence at regional and international levels

30. The proposal of the European Union for mandatory human rights due diligence legislation in 2021 was welcomed by speakers for its potential to bring transparency and create a more level playing field. Speakers’ expectations included the view that it should cover all companies and all internationally recognized human rights, apply throughout the supply chain and to investors, require companies to have effective operational-level grievance mechanisms, address liability for both failing to conduct due diligence and for causing harm, including monitoring by a competent public body, and include effective and dissuasive sanctions for violations. Speakers emphasized that the burden of proof should be in favour of rights holders and the need to address strategies of shifting responsibility, for example to non-European Union businesses in the supply chain. Regarding the effect of the mandatory due diligence on stakeholders outside Europe, speakers noted that it would bring a new element into the discussions with non-European Union States and would provide a “first mover advantage” for those companies that were already compliant with the rules in Europe. There were still concerns related to the scope of human rights risks that would be covered; how the mandatory due diligence would be able to combine protection of human rights with protection of the environment; unintended consequences if legal liability was not carefully designed; how to incentivize companies most effectively; issues related to forum rules and class action; and whether the mandatory due diligence legislation should apply to those companies that only had supply chains in Europe.

31. With regard to the legally binding instrument on business and human rights under development by the United Nations, participants commented on the second revised draft prepared by the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.⁷ In the second revised version, presented by the Chair of the open-ended intergovernmental working group, the working group sought to further align its provisions with already existing instruments and frameworks. Participants in the session agreed that the future legally binding instrument and the Guiding Principles should be complementary and mutually reinforcing. Among the suggestions were that (a) standards regarding business and human rights evolved with time and new times required new regulatory regimes, (b) the second revised draft was better aligned with pillar II of the Guiding Principles in that it covered human rights due diligence processes and all business enterprises, including State-owned enterprises, (c) as the Guiding Principles were aligned with the legally binding instrument, stakeholders supporting the Guiding Principles should equally provide support for the legally binding instrument and (d) if mutual legal assistance and international cooperation were to be taken seriously regarding business-related human rights abuses, a legally binding instrument was necessary. Other speakers suggested that the added value of the future legally binding instrument would be that it could provide effective access to remedy in a transnational context, cover administrative, civil and criminal corporate liability, cover all activities under the effective control of a company, reverse the burden of proof and lift the statute of limitations, even for civil mechanisms. At the same time, others highlighted the questions remaining, concerning both the scope and practicality of a comprehensive legally binding instrument.

32. Throughout the Forum, speakers consistently called for mandatory human rights due diligence legislation.

3. International investment agreements and human rights obligations

33. In a dedicated session on international investment agreements participants examined how they could be aligned with international human rights obligations. Speakers emphasized that reform of these asymmetric agreements was needed, recalled the value of the existing mechanisms and pointed to relevant developments, for example in the context of OECD. Participants pointed out that States should make efforts to avoid “treaty shopping” and address the incoherence between the human rights clauses of different treaties.

34. While speakers agreed on the responsibility of States to create a human rights-friendly and conducive environment for the interpretation of international investment agreements equipped with human rights clauses, views differed on which concrete options would be most effective. Speakers agreed that technical cooperation between States would lead to better policy coherence and should also be supported by multi-stakeholder dialogue. Open questions included whether special human rights clauses would be needed in international investment agreements or whether it would be sufficient to rely on the existing practice of preferential treatment, and whether to set human rights and due diligence as a precondition for treaty protection. While participants agreed that human rights references should go beyond corporate social responsibility, views differed on the scope of the human rights to be integrated. Participants agreed on the need for practical and enforceable human rights clauses and access to effective remedy by victims.

B. Realizing access to effective remedy

35. Several sessions touched on the role of effective corporate accountability in preventing business-related human rights abuses, especially in cases with transnational dimensions. Speakers highlighted the challenges related to *forum non-conveniens* claims, forum-shopping cases and the need for a reverse burden of proof, the tension between confidential settlements in the interest of the victims and in the public interest for disclosure, as well as the absence of mandatory human rights due diligence. Speakers presented different corporate accountability avenues, including litigation cases in South Africa, the United Kingdom, the United States and the European Union, settlement cases in Australia and the

⁷ See www.ohchr.org/en/hrbodies/hrc/wgtranscorp/pages/igwgontnc.aspx.

United Kingdom, and a combination of different accountability tools applied in Australia. Several speakers emphasized that in order to ensure effective corporate accountability a mixture of tools was needed, from strategies designed in partnership with affected communities to mandatory human rights due diligence.

36. For the third phase of the accountability and remedy project, OHCHR analysed challenges, opportunities, best practices and lessons learned with regard to a range of non-State-based grievance mechanisms.⁸ In July 2020, it presented its findings to the Human Rights Council and made several recommendations for improving the effectiveness of the mechanisms, drawing upon good practice lessons uncovered during the two-year project.⁹ Among the key findings was that developers and operators of non-State-based grievance mechanisms needed to put much greater emphasis on the needs, expectations and perspectives of the people for whose use those mechanisms were intended. Part of this concerned making sure that those seeking remedy were protected from retaliation and OHCHR organized a session at the Forum focused on preventing retaliation through non-State-based grievance mechanisms.

37. Speakers pointed out that widespread retaliation and intimidation were major deterrent factors for rights holders to seek remedy for business-related human rights abuses and stressed that non-State-based grievance mechanisms would only be effective if they were aligned with internationally recognized human rights. OHCHR shared its findings regarding retaliation in the context of such mechanisms and highlighted the different ways in which the report on the third phase of the accountability and remedy project could be a useful tool for States and those designing and operating non-State-based grievance mechanisms to better address retaliation risks.¹⁰ Another example of efforts in this context was a guide developed by the Inter-American Development Bank and presented by the representative of the European Bank for Reconstruction and Development for independent accountability mechanisms on measures to address the risk of reprisals in complaints management, which included examples and tools that could be used to assess and address reprisals more efficiently and effectively.¹¹

38. Speakers noted that non-State-based grievance mechanisms were often designed without sufficient stakeholder engagement, which left rights holders isolated and uninformed before and during the remedy process. More meaningful consultation with affected workers and communities and a commitment to collective approaches, on the other hand, would make such mechanisms more inclusive and help them to meet the effectiveness criteria of the Guiding Principles for non-judicial mechanisms.¹²

IV. Corporate respect for human rights: towards effective human rights due diligence during COVID-19, going beyond “business as usual”

39. The human rights and economic consequences of the COVID-19 pandemic have demonstrated the need for companies to ensure that they are making decisions that respect human rights and that they establish strong human rights safeguards that anticipate and avoid negative impacts on workers and communities. During the Forum, participants emphasized that while several “pioneers” were building positive practices around the various components of human rights due diligence, considerable efforts were still needed to mainstream corporate respect for human rights.

40. As pointed out by speakers from companies, the investor community and civil society, COVID-19 had had a devastating effect on groups already at heightened risk of abuses worldwide, especially on migrant workers, temporary workers, workers in the informal

⁸ See the web page of the project at www.ohchr.org/EN/Issues/Business/Pages/ARP_III.aspx.

⁹ A/HRC/44/32 and A/HRC/44/32/Add.1.

¹⁰ See www.ohchr.org/Documents/Issues/Business/ARPIII-retaliation.pdf.

¹¹ Inter-American Development Bank, *Guide for Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management: a Practical Toolkit* (January 2019).

¹² Principle 31.

sector, women and minorities. At the same time, positive examples showcased a greater use of technology during the pandemic, including remote human rights due diligence assessments of supply chain partners, remote access to workers to understand the impact of COVID-19 and virtual due diligence auditing solutions.

41. Speakers emphasized the need for multi-stakeholder and social dialogues, as well as business-to-business partnerships, to address business-related human rights challenges in the context of COVID-19.

42. Speakers agreed that as more than 90 per cent of the targets of the Sustainable Development Goals were linked to international human rights standards, it was critical that businesses embedded respect for human rights in their strategies and activities in order to realize an equal and fair world. There was agreement that after the pandemic there would be a need to avoid going back to business as usual and that a change in mindset was needed by moving the lens from risks to business to risks to people. It was also agreed that responsible business depended on resilient workforces and that robust human rights due diligence frameworks embedded in the day-to-day functioning of businesses across the supply chain were needed as preventive measures, so as to be better equipped to address the risks to people in the time of COVID-19 and future crises.

V. United Nations Guiding Principles on Business and Human Rights at 10: stocktaking and vision for the next decade

43. Approaching the tenth anniversary of the Guiding Principles in 2021, the Forum provided an opportunity to report on the Working Group's Guiding Principles 10+ project. The project is taking stock of the first 10 years of implementation of the Guiding Principles and a road map for better implementation over the next decade is being developed. The Forum overall served as a global multi-stakeholder dialogue to inform the project. The agenda also included sessions specifically designed to inform the Guiding Principles 10+ stocktaking effort.

44. The data collected by Corporate Human Rights Benchmark on the uptake of the Guiding Principles by the largest companies in some high-risk sectors (for example, agricultural products, apparel and the automotive, extractive and electronics manufacturing sectors) showed that an increasing number of companies have policy commitments to respect human rights, but also that there are still disconnects between commitments and human rights due diligence, in particular in supply chains. Similar data was presented by S & P Global based on an assessment of 3,500 companies. The data indicated an increasing number of policy commitments, but that relatively few companies could demonstrate that they had robust due diligence processes in place. In presentations, speakers also emphasized that among investors there was generally still a disconnect between the increasing focus on sustainable finance, environmental, social and corporate governance and the Guiding Principles, because of a prevailing lack of understanding that social criteria and many environmental and governance indicators reflected human rights issues.

45. Representatives from global and national trade unions pointed out that while companies increasingly acknowledged their responsibility to respect human rights, grievance mechanisms remained weak. Union representation was very low in almost all industries and there was a low level of respect for freedom of association and the right to collective bargaining in general. The misclassification of workers, especially of gig economy workers, added to the challenge of labour exploitation and social security vacuums. Speakers stressed that for better implementation of the Guiding Principles, mandatory human rights due diligence and robust enforcement mechanisms were needed at all levels, as well as collaborative and tripartite efforts to strengthen the social dialogue and empower workers in their right to freedom of association and collective bargaining, and that granting employment status to workers was a basic right.

46. Several global business organizations also presented their perspectives on the first 10 years of the Guiding Principles and the challenges for realizing wider and more comprehensive implementation in the next decade. Speakers emphasized that for better implementation, more collaborative efforts were needed at all levels between Governments,

businesses and civil society and that increased attention must be paid to supply chains and in particular to small and medium enterprises. It was time for Governments, international institutions and business to integrate the Guiding Principles in the context of operationalizing the Sustainable Development Goals and emerging from the COVID-19 crisis, as the Principles provided the authoritative and practical framework for preventing and addressing impacts on people.

VI. Regional perspectives

47. The Forum included sessions dedicated to discussing trends and challenges in specific regions.¹³

48. Speakers representing different constituencies of the Latin America and Caribbean region highlighted the importance of multi-stakeholder participation in public policies and business decisions regarding their activities. The business-related abuses suffered by indigenous peoples and the rising incidence of attacks on human rights defenders working on business-related human rights in the region required ratification of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, an instrument for promoting access to information, meaningful consultation and remedy, and for protecting human rights defenders.¹⁴ Persistent challenges remained in the context of the extractive industries, renewable energy and agriculture. Stakeholders called on Governments to create an enabling environment for preventing and addressing business-related human rights abuses by strengthening the rule of law framework and by taking action against impunity.

49. In Central and Eastern Europe, uptake and implementation of the Guiding Principles remained low. Key gaps and challenges highlighted included a lack of transparency in the context of State ownership and control over economic entities and processes, with the consequence that States were not leading by example in their role as economic actors; the often politicized narrative that emerged when human rights concerns were raised and the shrinking space for civil society; and few platforms for multi-stakeholder dialogue and collaboration that could have potential for moving towards an inclusive approach to identify and address relevant issues of common interest and rebuild trust for a new social contract.

50. The session on Asia and the Pacific showcased noticeable developments in some countries, such as India, Japan and Mongolia, that were moving ahead with national action plans. Key challenges highlighted were the lack of clear indicators and measurements of the implementation of the Guiding Principles, the weak monitoring capacity of the State and the lack of capacity or enabling environment for trade unions.

51. The discussion on trends and challenges in Africa pointed to the need for Governments to step up efforts to develop national action plans. Key challenges highlighted included corruption, the large informal sector, governance gaps, the capacity of the justice system in many countries and the vulnerable situation of women, children, indigenous people and human rights defenders.

52. The session on the Group of Western European and Other States featured regulatory and policy innovations, including efforts to implement mandatory corporate human rights due diligence (law on the duty of vigilance in France), lessons learned from follow-up on national action plans and efforts to strengthen access to remedy (the Tariff Act in the United States).

¹³ The present section is focused on the main regional challenges and trends, but additional country-specific developments are to be found in other parts of the report.

¹⁴ See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-18&chapter=27&clang=_en.

VII. Issues in focus

A. Groups at risk

53. The programme of the Forum included sessions to address challenges faced by individuals and groups that might be at heightened risk of becoming vulnerable or marginalized.

54. Participants held a dedicated discussion on the impact of the COVID-19 crisis on migrant workers. For example, in India internal migrant workers were already badly affected by urban poverty and a lack of access to the limited public welfare available, with COVID-19 further amplifying the challenges of exploitation and job losses. Their situation was reportedly made worse by the reform of the labour code intended to create a more investment-friendly environment. Another example highlighted the plight of hundreds of thousands of Asian and African migrant workers in the Gulf Cooperation Council region who had lost their jobs, been put on forced leave without pay, had their mobility restricted in multiple ways and had often suffered racial discrimination because pandemic laws and financial packages were mostly tilted in favour of nationals of Gulf Cooperation Council countries. Speakers also noted that female migrants were particularly affected during the pandemic in that region because the restrictions on mobility had made worse their already isolated working environment. It was pointed out that owing to the lack of effective trade union representation of migrant workers, they were often not even aware of the health schemes available to assist them. Speakers underlined the need for laws to create equality between national and migrant workers in order to avoid discrimination; closer collaboration between countries of origin and countries of destination to protect migrant workers; inclusive policies and procedures by trade unions to support migrant worker representation; the role of national human rights institutions in supporting Governments in the implementation of laws and policies protecting the rights of migrant workers; free media, including social media, and efforts to raise awareness of the rights of migrant workers.

55. Representatives of indigenous peoples noted that obtaining their free, prior and informed consent before adopting legislation or undertaking projects that affected their rights to land, territory, livelihoods and resources remained a major concern, with speakers highlighting developments in, for example, Bangladesh, India, Kenya and the Philippines. The Forum shed light on the continued alarming trend of attacks, killings, criminalization and persecution of indigenous leaders and human rights defenders acting on their behalf. Examples included cases in Colombia and special reference was made to the frequency of the violation of the rights of women and children, as well as in the extractive industry in Peru, where the collective, environmental and health-related rights were reported to be at high risk.

56. The impacts experienced by indigenous peoples during the COVID-19 pandemic had been wide-ranging, such as increased land grabs, restrictions on access to their customary lands, territories and resources, and a continued disregard for their rights to self-determination and self-governance. That had led to increased food insecurity, loss of livelihoods and an abhorrent increase in intimidation, criminalization, violence and killings of human rights defenders, including those working on questions related to land and the environment. It was noted that both States and businesses worldwide had opportunistically used COVID-19 to sidestep environmental and human rights responsibilities in favour of economic growth, including the rights to free, prior and informed consultation and consent.

57. Speakers emphasized that the collective rights of indigenous peoples were generally still not respected and that better and wider implementation of the Guiding Principles was needed, including a smart mix of voluntary and mandatory measures, as well as more dialogue with indigenous people and more involvement of them in decision-making. Recommendations to improve respect for the rights of indigenous peoples in the context of business activities were emphasized, including establishing and maintaining a continuous process of respectful dialogue between indigenous peoples, States and business. The essential elements of this included the mapping of indigenous peoples in business operation areas, consultation with indigenous peoples on their free, prior and informed consent and their involvement in the decision-making process.

58. Participants also addressed the culturally sensitive, intersectional and multilayered question of gender-based violence affecting women, girls and lesbian, gay, bisexual, transgender and intersex people across vulnerable groups such as indigenous persons, migrant workers, victims of trafficking, sex workers, domestic workers, persons with disabilities and refugees. Participants stressed that the COVID-19 pandemic had exacerbated the situation of gender-based violence faced by women, girls and lesbian, gay, bisexual, transgender and intersex people because they had been forced to work from home, where their abusers would also be, and mobility constraints limited their reporting opportunities.

59. As a recent ratifier of the ILO Violence and Harassment Convention, 2019 (No. 190), the representative of Fiji praised the added value of the new treaty for its holistic and integrated approach in that it provided a clear definition of gender-based violence and specifically included workers in both the formal and informal sectors. An example of a national strategy for preventing and fighting gender-based violence was presented by the representative of Canada, who outlined the federal strategy aimed at addressing the root causes and the barriers faced by both victims and survivors, in order to prevent harassment and violence in the workplace and children from sexual exploitation in the digital context. Among initiatives by business was an example given by Vodafone of its global policy for recognizing domestic violence and abuse in all its forms, coercive control, financial and economic abuse, and physical and other forms of violence as a workplace issue, as well as a portfolio of applications to connect survivors with support.

60. Speakers agreed that addressing gender-based violence effectively required that mentalities and mindsets be changed through joint efforts by Governments, businesses, civil society and trade unions.

B. Informal sector

61. The agenda of the Forum included a discussion on current barriers and potential solutions to embedding the Guiding Principles in the informal economy, which is still a major part of the global economy, especially in developing countries.¹⁵ Speakers noted that the main challenges of the informal sector were the lack of social protection for workers and persisting marginalization, stigmatization, bonded labour, modern-day slavery and child labour. The situation was particularly precarious for women, who faced the double challenges of informal sector employment and childcare work, and were often exposed to domestic violence as well.¹⁶ Speakers concluded that addressing the informal sector should start with steps taken by States to create an enabling legal environment by formalizing the informal economy based on ILO Recommendation 2015 (No. 204) on the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and Transition from the Informal to the Formal Economy, followed by the adoption of a mix of laws, policies, strategies and support programmes and education, as well as incentives for economic actors. As emphasized by the representative of Women in Informal Employment: Globalizing and Organizing, transition to the formal sector should mean essentially social inclusion, in order to empower workers and involve trade unions in the process.

C. Addressing racism and xenophobia

62. Participants in one session of the Forum examined how the expectations set out in the Guiding Principles could support efforts to address racism and xenophobia in a business context, including in the light of the Black Lives Matter movement and protests against racial discrimination and injustice.

¹⁵ According to ILO estimates, 2 billion women and men (aged 15 and over) work informally, representing more than 60 per cent of the world's employed population, and about 81 per cent of the world's economic units are informal.

¹⁶ The representative of Oxfam reminded the meeting that more than 90 per cent of the workforce in India was in the informal sector, of which 95 per cent were women.

63. The Chair of the Working Group of Experts on People of African Descent pointed to global, often legalized, systematized racism and speakers noted among further challenges the intersectionality of discrimination. They also noted that corporate responsibility to respect human rights should go beyond mere statements against racism and address race-based discrimination internally as well. Examples of business practices included internal policies on recruitment.

64. Speakers agreed that as business traditionally played a role in the construction of race and exploitation of people for profit, it should play a major role in addressing the legacy of slavery and its origins and in deconstructing racism by working together with civil society and groups representing affected stakeholders, so that companies “look like the world which they are part of”.

D. Climate change and environmental challenges

65. The session on climate change was addressed by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, who emphasized that climate change represented a serious, imminent and existential risk to human rights that States had a duty to address. He also noted the negative impact of climate change on the lives of communities and that the life cycle of fossil fuels were already greatly affected. The Special Rapporteur called for informed decisions and inclusive dialogue to protect against more damage being done to the environment.

66. The representative of the Commission on Human Rights of the Philippines provided an example of efforts at the national level in calling on the Government to introduce transparency measures for businesses, as well as mandatory human rights and environmental due diligence.

67. Various speakers emphasized that legislation introduced in many countries as part of government responses to COVID-19 had had a severe impact on the environment, including new bills or amendments to laws loosening environmental standards and measures that reduced the enforcement of environmental laws and access to information related to the protection of the environment, or allowing companies to contribute to environmental deregulation by granting bailouts to highly polluting industries. Participants agreed that States must instead restructure their economies in a more environmentally sustainable manner and regulate better to create an enabling environment and embrace the green economy. Calls were made for responsible recovery and a new social contract, based on multi-stakeholder approaches, universal social protection and a just and equitable transition that leaves no one behind.

E. Business and human rights in conflict-affected contexts

68. The Working Group launched a project in 2018 to clarify the practical steps that States and business enterprises should take to implement the Guiding Principles in conflict and post-conflict contexts to prevent and address business-related human rights abuse. The findings were presented in a report to the General Assembly in October 2020¹⁷ and the Forum provided space for further dialogue among stakeholders.

69. The Chair of the Working Group presented the key insights from the report, in which a range of policies and tools were identified and clarified that States, alone or as members of multilateral organizations, and businesses could employ in conflict-prone regions to help ensure that business activity did not lead to human rights abuse and in turn stimulated or exacerbated conflict or negatively impacted peacebuilding. Key aspects addressed were:

- (a) The evolving normative environment of human rights and humanitarian law;

¹⁷ A/75/212.

(b) Triggers and indicators that should lead to heightened action by States, business (in the form of better corporate human rights due diligence) and the United Nations system;

(c) The specific challenges in post-conflict situations (reconstruction and peacebuilding), including the key issues of access to remedy and transitional justice;

(d) The challenges of the cyber age.

70. The Working Group noted that there was clarity on what was expected from business and States in conflict-affected areas, but that more decisive action to integrate business and human rights into peace and security frameworks was required.

71. Government representatives highlighted the practical challenges faced on the ground. The Presidential Commissioner for Human Rights and International Affairs of Colombia pointed to the widespread presence of illegal businesses, the illegal use of natural resources, the illegal export chains, the violent pressure on local indigenous communities, the lack of access to non-State actors and the magnitude of the informal sector. The representative of the Government of Sierra Leone highlighted challenges related to violations of economic, social and cultural rights.

72. Speakers agreed that a comprehensive, multi-stakeholder and systematic, context-specific approach and a collective and extensive dialogue were essential, and should be supported by effective incentives to bring the relevant actors along. Speakers also noted the importance of connecting the dots between the Guiding Principles and multi-stakeholder governance initiatives and between other efforts by the United Nations to promote conflict prevention and sustainable development, such as the work led by UNDP, as well as reinforcing the capacity of national human rights institutions and civil society to support affected stakeholders and promote accountability.

F. Corruption

73. Following the report of the Working Group to the forty-fourth session of the Human Rights Council,¹⁸ participants in one session of the Forum discussed the alignment between the business and human rights agenda and the anti-corruption agenda.

74. Participants in the session focused on accountability mechanisms that could address cases where human rights abuses and corruption were present, such as targeted sanctions, the freezing of assets and visa denials. The United States Global Magnitsky sanctions programme was mentioned as one such example.¹⁹ Participants also noted the importance of building related evidentiary files, active campaigning, strategic litigation and engagement at policy and legislative levels, as well as comprehensive and targeted sanctions and enforcement mechanisms.

75. The session also focused on remedy for victims of business-related human rights abuses that are caused by, or linked to, corruption. Civil society representatives pointed out the need for a definition of victims of corruption that would acknowledge the extent of the impact that corruption had on their enjoyment of human rights, and that this would help to ensure access to remedy. In addition, the direct and/or indirect involvement of States in corrupt business activities, resulting in human rights abuses, was raised as a major challenge, especially with regard to the global arms trade industry. In relation to that industry, participants discussed the way in which business enterprises and States were closely intertwined, which often resulted in legal impunity.

¹⁸ A/HRC/44/43.

¹⁹ See www.state.gov/global-magnitsky-act/.

G. Role of national human rights institutions in preventing business-related human rights abuses

76. The Forum also showcased ways in which national human rights institutions have been working to engage Governments, business enterprises and civil society organizations in preventing business-related human rights abuses and considered the tools that the institutions have employed to overcome the challenges faced in this process. For example, the issue of jurisdictional limitations related to the national human rights institutions in India and the Republic of Korea was raised, as was the need for capacity-building for the national human rights institution in the Democratic Republic of the Congo to deal with business-related cases.

77. National human rights institutions presented examples of how they had been addressing business-related human rights abuses, including the public services provided by private companies monitored by the Office of the Public Defender (Ombudsman) in Georgia; investigations carried out by the national human rights institution in the Democratic Republic of the Congo on alleged labour rights abuses involving mining companies; the work of the Human Rights Commission in New Zealand in monitoring labour policies and modern-day slavery involving private companies; the role of the National Human Rights Commission in Nigeria in empowering local communities regarding the oil spill of an international company that was affecting local livelihoods; and the efforts of the National Human Rights Commission in India relating to the rights of miners regarding exposure to silicosis in Rajasthan. The National Human Rights Commission of the Republic of Korea presented lessons from its work on State-owned enterprises, in which it had recommended that 988 State-owned enterprises and public organizations adopt business and human rights implementation plans in order to generate a trickle-down effect on private companies. A regional initiative from Latin America showcased the cooperation between regional national human rights institutions in Argentina, the Plurinational State of Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay and Peru in monitoring the human rights impact of mining projects in the region.

78. Following a global consultation organized in collaboration with the Global Alliance of National Human Rights Institutions in 2019, the Working Group is currently drafting a report to be submitted to the Human Rights Council in June 2021 on the role of national human rights institutions in promoting the implementation of the Guiding Principles and facilitating access to remedy for business-related human rights abuses.

H. Role of human rights defenders during the COVID-19 pandemic

79. The Forum also addressed the bleak situation facing human rights defenders, their role during the COVID-19 pandemic and the ways in which they needed to be part of the recovery process. The Special Rapporteur on the situation of human rights defenders recalled in her opening remarks that many of the attacks, killings, threats and other kinds of intimidation were linked to business activities around the globe, and that there was still a considerable absence of real engagement by companies with potentially affected defender communities. She called upon States and businesses to give priority to human rights and human rights defenders in the process of “building back better” as human rights defenders could help businesses to develop an understanding of the local situation.

80. Interventions made by human rights defenders during the session revealed that in many countries during the COVID-19 pandemic, Governments had introduced policies that increased restrictions on the activities of civil society organizations, including examples from Cambodia and India and alarming cases of attacks on human rights defenders reported as taking place in Brazil, Cambodia and South Africa, among other places.²⁰

81. The Government of Norway described its legislative proposal focusing on transparency with respect to fundamental human rights and decent work in business and

²⁰ Further background material and submissions to the Forum on the role of human rights defenders during the COVID-19 pandemic is available at https://static.sched.com/hosted_files/2020/unforumbhr/64/HRDs%20session%20-%20background%20documents.pdf.

supply chains, which might also enable civil society to request information from business enterprises regarding risks to human rights defenders. Further examples of protection for human rights defenders included the public position taken by the International Finance Corporation on reprisals and the launch in 2016 by the Center for Justice and International Law of the Esperanza Protocol, which provided guidelines for States on how to carry out investigations into attacks on human rights defenders.²¹

82. The Forum also featured a presentation by the Human Rights and Business Award Foundation recognizing the work of human rights defenders from the Global South and presenting the 2020 award to the Migrant Workers Rights Network in Thailand.²² At the award ceremony the courage of civil society organizations and advocates working at great risk to support affected communities was highlighted.

83. In concluding remarks, the representative of the Business and Human Rights Resource Centre emphasized that better protection of human rights defenders required mandatory human rights due diligence and that a new social contract was needed, premised on greater shared prosperity, equality and security. As noted by Greenfood, a Swedish company that presented its own story of stepping up to support a human rights defender in Ecuador, “joint action between companies and civil society, as well as international pressure, play an essential and powerful role in supporting the work of human rights defenders in contexts where respect for human rights cannot be taken for granted”.

I. Technology

84. The OHCHR B-Tech project provides authoritative guidance and resources to advance the implementation of the Guiding Principles in the technology space.²³ Under the auspices of the project, stakeholders discussed a “smart mix of measures” in line with the State duty to protect human rights in the context of digital technologies. The pandemic had shown that technology could play a vital role in managing public health, yet technological solutions also presented challenges that needed to be managed responsibly. Speakers pointed to the need for alignment between the responsibilities of technology companies and the State’s duty to protect against human rights abuses, particularly in countries with limited rule of law and/or weak data protection regimes.

85. Examples discussed included challenges around human rights protection regarding technology in the telecommunications business in sub-Saharan Africa, the increasing importance of national human rights institutions in working on human rights in the technology industries and how national action plans on business and human rights could foster the uptake of the Guiding Principles in connection with the development, deployment and use of digital technologies.²⁴

86. Participants agreed that policymakers should put further emphasis on human rights protection in the technology space, for example by creating a balanced mix of voluntary and mandatory measures for promoting human rights due diligence and strengthening the role of national human rights institutions in monitoring human rights impacts and ensuring access to remedy for human rights harms.

²¹ According to the Business and Human Rights Resource Centre, in 2020 of 604 attacks on human rights defenders who work on human rights related to business, 194 were on human rights defenders from the Latin America and Caribbean region. See www.business-humanrights.org/en/from-us/human-rights-defenders-database/.

²² See www.humanrightsandbusinessaward.org/award-recipient/migrant-workers-rights-network/.

²³ See www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx.

²⁴ See Danish Institute for Human Rights and Global Partners Digital, *The Tech Sector and National Action Plans on Business and Human Rights. A Thematic Supplement to the National Action Plans on Business and Human Rights Toolkit 2017 Edition* (Copenhagen and London, July 2020).

VIII. Closing plenary session: key messages

87. The closing plenary session of the Forum started with a “virtual fireside chat” between Anand Giridharadas, author of *Winners Take All: the Elite Charade of Changing the World* and Caroline Rees of Shift, discussing what it would take to meaningfully reform capitalism so that it worked for people. The speakers suggested that “we need an era of many strings attached when it comes to the extraordinary privilege of being a corporation” through the means of mandatory policies, as well as rules and regulations on the business sector because “the era of voluntary corporate virtue is over”.

88. The Forum concluded with reflections from speakers representing different backgrounds, sharing their key impressions from the Forum for the Guiding Principles 10+ stocktaking and road map process. Participants emphasized two common messages: (a) that the impact of the COVID-19 pandemic should be used as an opportunity to redouble the efforts of all stakeholders and “build back better” and (b) that faster and wider progress in building out the mandatory dimension of the Guiding Principles smart mix was urgently needed in order to prevent business-related harms to people and the planet and for accountability when harms happened.

89. The representative of the Indigenous Peoples’ Caucus recalled that the key to a sustainable future for people and the planet was intrinsically related to respecting the rights of indigenous peoples. A call was made for the creation or enhancement of United Nations monitoring and reporting mechanisms on business and human rights for indigenous peoples and it was noted that additional efforts must be made to support indigenous peoples, who had suffered disproportionately from the impacts of the pandemic.

90. The representative of the International Transport Workers’ Federation emphasized that the pandemic had revealed widespread failures by business and States in providing workers with safe workplaces and adequate protective equipment, restricted workers’ freedom of association and had had a disproportionate impact on women, young workers, migrant workers and people of colour. Businesses must improve their due diligence and remedy, including by exercising leverage across business relationships when linked to adverse impacts, as a matter of urgency.

91. The representative of the African Coalition for Corporate Accountability emphasized that more focus should be put on business and human rights in conflict and post-conflict situations, the protection of human rights defenders, the situation of informal economies and the development of legally binding measures. It was noted that Africa was lagging behind in developing national action plans.

92. The representative of the International Federation for Human Rights noted that State actions in business and human rights in the last decade had not been effective and more needed to be done. The Working Group was requested to provide further interpretation of the implications of the Guiding Principles.

93. The representative of the Global Business Initiative on Human Rights stressed the importance of building human resilience in all parts of global value chains through creating new business models. It was noted that there was a need for better and smarter regulations to motivate companies to move from reactive to proactive approaches.

94. A representative from a Thai company pointed out that incentives and capacity-building for business and the commitment of the corporate sector were key to implementing the Guiding Principles, as were the use of proper measurements and indicators and the complementarity of policy coherence between global agendas.

95. The representative of an asset management firm noted that in order to ensure better human rights due diligence, investors needed to ask companies about the implementation of the Guiding Principles and look beyond the companies they invested in to seek partners across stakeholder groups to support calls for human rights due diligence legislation, helping to create a more level playing field for companies and drive an additional push for improvements.

96. The representative of the Global Alliance of National Human Rights Institutions emphasized the need to strengthen the capacity of national human rights institutions to enable them to play more widely the role envisaged for them in the Guiding Principles in promoting and protecting human rights in a business context. It was noted that they would also be well-placed to support processes for developing strategies for integrating the Guiding Principles in the context of addressing key current challenges, such as climate change, the protection of human rights in the digital domain and addressing systemic racism in the economy.

97. The representative of UNDP stated that the challenge of recovering from the COVID-19 crisis presented an opportunity to review the capacities of all institutions and societies to address business and human rights issues, which were closely connected with wider social and economic inequalities and vulnerabilities.

98. Key messages emerging from the Forum discussions, as summarized by the Chair of the Working Group, included the following observations:

(a) The world was facing multiple crises – from climate change to economic meltdown, to the staggering impacts of a global pandemic, to the scourge of racism and it was high time to act and make progress with respect to addressing how business engaged in terms of respect for human rights;

(b) The Guiding Principles were a guidepost in times of crisis. Multiple crises, including the COVID-19 crisis, the climate crisis and the crisis of continued racism across the world, had shown the fragility of systems that did not put people's fundamental welfare and dignity at their centre. If the world was to be truly "future fit," it needed to keep the focus on human rights as it recovered from these crises and combat abuses going forward;

(c) The future was one of mandatory measures. There was now strong evidence that voluntary measures were not getting the world where it needed to be. Trade unions, civil society groups and others had tirelessly advocated for binding measures at the national, regional and international levels. Companies and investors increasingly agreed, calling for unified approaches that would level the playing field and position human rights due diligence as a competitive advantage. There was broad agreement that mandatory measures should be based on the Guiding Principles and rights holders should have seats at the table as measures were developed. As for States, the world could not wait forever for the playing field to be levelled;

(d) Impacts on the planet were impacts on people. Environmental and human rights efforts were too often siloed and that had to change. Integration of those issues was indispensable for a sustainable future. Human rights defenders had a key role in this regard, as they understood the link between the environment, development and rights;

(e) The future was financial. There was now a stronger focus on the responsibility and accountability of investors, development finance institutions and commercial banks under the Guiding Principles. The Principles clarified the responsibility that financial actors carried to respect human rights throughout their core activities;

(f) The future was data-driven. The latest results from the Corporate Human Rights Benchmark challenged everyone to do better. Of the 230 companies assessed, 79 had scored zero for human rights due diligence. The Forum had also heard how better and more consistent data was needed to drive meaningful human rights practices and put outcomes for people at the centre;

(g) Governance and business models were key. Human rights needed to be embedded into the very DNA of every company. Responsible business was resilient business, and true progress could not be made unless human rights were integrated into how companies were owned and grown;

(h) Remedy was one of the most important tools for prevention. It was not only reactive but helped to stop further harms, influenced improvements in corporate practices and had the potential to improve relationships by recognizing what had gone wrong and putting it right. The world must always remember pillar 3 of the Guiding Principles and put effective remedy at the centre of its efforts;

(i) Finally, States needed to take action along all dimensions of the “smart mix” proposed by the Guiding Principles. The current move towards mandatory due diligence in some jurisdictions was encouraging in that regard.

99. The Chair concluded that all and more of the themes he had mentioned had been instrumental inputs into the Working Group’s Guiding Principles 10+ project that would take stock of the first 10 years of the Guiding Principles and develop an evidence-based road map for the decade ahead. It would be presented in June 2021.
