



General Assembly

Distr.: General
25 January 2013

Original: English

Human Rights Council
Working Group on the issue of
human rights and transnational
corporations and other business enterprises
Third session
26–30 November 2012

Outcome of the third session of the Working Group on the issue of human rights and transnational corporations and other business enterprises

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Outcome of the third session of the Working Group

1. The Working Group on the issue of human rights and transnational corporations and other business enterprises held its third session from 26 to 30 November 2012, in Geneva. The session was held in advance of the first annual Forum on Business and Human Rights (4–5 December 2012), which was established by Human Rights Council resolution 17/4 and is guided by the Working Group.
2. The Working Group conducted a preliminary assessment of its dissemination and engagement efforts in 2012 and noted that between July and December 2012 it received more than 120 requests from States, businesses and civil society to participate in meetings, workshops, consultations and conferences. These figures indicate a high level of global interest in the Working Group and in the Guiding Principles on Business and Human Rights. Members of the Working Group attended close to 60 such meetings in this six-month period.
3. With a view to triggering a structured conversation and understanding of the early challenges, opportunities and policy innovations undertaken by Governments in the implementation of the Guiding Principles on Business and Human Rights, the Working Group launched a survey of Member States of the United Nations. A questionnaire was sent to Member States in October 2012, which is being supplemented by in-depth interviews with a limited group of States across regions. This survey is the first of its kind and its preliminary results were presented during the Forum on Business and Human Rights on 4 December 2012. The final results of the survey will be presented to the Human Rights Council in June 2013 in the Working Group's annual report thereto. The analysis seeks to draw generic lessons and observations, where replies by States will be made anonymous. The Working Group expresses its appreciation to all States that have submitted responses to the questionnaire within the original deadline. Upon request from a number of Governments, the deadline for the survey has been extended to 30 January 2013.
4. The Working Group further created a pilot survey to assess the views of business representatives regarding their company's implementation of the corporate responsibility to respect human rights. Preliminary results from this survey were also presented at the 2012 Forum on Business and Human Rights, based on replies from 117 individuals from business organizations. The Working Group expresses its appreciation to all business entities that have submitted responses to the questionnaire within the deadline. Results from this survey will also be reflected in the report of the Working Group to the Human Rights Council in June 2013.
5. Both the State and business surveys will inform the Working Group's ongoing work to establish a factual baseline understanding of the level of awareness and implementation of the Guiding Principles.
6. The Working Group decided to appoint Pavel Sulyandziga as Vice-Chairperson, to fulfil all duties of the Chairperson when the Chairperson is otherwise unavailable. The Vice-Chairperson is normally that member of the Working Group who will become the Chairperson upon the end of the mandate of the current chairperson. The methods of work were modified accordingly.¹
7. The Working Group further decided that, in some circumstances, it may decide to exercise its discretion to raise specific allegations that it determines to be particularly emblematic with relevant State authorities and companies, and request clarification or

¹ See revised methods of work in the annex to the present document.

additional information as appropriate, and decided to modify its methods of work accordingly.²

8. The Working Group met with the Expert Mechanism on the Rights of Indigenous Peoples to discuss areas of possible cooperation on the issue of the impact of business enterprises on the rights of indigenous peoples, including the Expert Mechanism's current work on indigenous peoples in relation to the right to participate in decision-making with a focus on extractive industries.

9. The Working Group decided to submit a thematic report to the General Assembly in 2013 that will focus on the situation of indigenous peoples, with regard to the prevention of negative impacts of business activities on the rights of indigenous peoples, as well as addressing such impacts when they occur.

10. The Working Group held a meeting with the United Nations Conference on Trade and Development (UNCTAD) to discuss areas of possible cooperation on the issue of investment policy and to promote the incorporation of references to the Guiding Principles and the responsibilities of States and business enterprises with regard to human rights in investment agreements, including through the UNCTAD Investment Policy Framework for Sustainable Development.

11. The Working Group reaffirmed its commitment to engage openly and meaningfully with all stakeholders, including States, business enterprises and civil society organizations, throughout its activities and projects through a balanced approach and reiterated its encouragement to all stakeholders to do the same.

12. Within that context, the Working Group reaffirmed its commitment to engage with and offer its support to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations system as a whole to maximize synergies and ensure broad outreach as well as effective partnerships with all stakeholders, including the business sector, States and civil society. This would be done with a view to strengthening the contribution of the United Nations system as a whole to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles on Business and Human Rights, in line with resolution 21/5 of the Human Rights Council and the recommendations of the Secretary-General in his recent report to the Human Rights Council (A/HRC/21/21).

13. The Working Group further discussed its approach to partnerships and decided to emphasize that it welcomes support in order to fulfil its mandate and advance the business and human rights agenda. The Working Group indicated its openness to establishing strategic and operational partnerships with all relevant stakeholders, including States, business enterprises and civil society organizations, as well as international and regional organizations towards this end. It therefore welcomes proposals to engage in such partnerships, subject to identifying suitable synergies with the strategy of the Working Group. The Working Group is further open to accepting support from individuals and institutions through secondments, as appropriate.

14. The Working Group reflected on its first country visit to Mongolia and its draft country visit template, designed to produce a robust and systematic approach by the Working Group to its official country missions. The Working Group plans to further refine its methodology and approach to country missions through wider stakeholder consultation in 2013.

² Ibid.

15. The Working Group discussed its possible involvement in the post-2015 development agenda and adopted a strategy for targeted engagement.

16. The Working Group carried out final preparations for the 2012 Forum on Business and Human Rights and discussed its strategy for the 2013 Forum on Business and Human Rights.

17. The Working Group further decided to pursue the possibility of convening and participating in regional forums to promote discussion on the current situation of business and human rights in each region, including trends, good practices and challenges, with a view to informing the 2013 Forum on Business and Human Rights. Priority attention for the regional forums in 2013 will be given to the Africa and Latin America regions. The Working Group calls on interested institutions, including regional organizations, to engage with the Working Group and provide support to such efforts.

18. The next session of the Working Group is scheduled for 11–15 February 2013. The Working Group will hold an open consultation with stakeholders during this session. Further information with regard to the open consultation will be provided on the OHCHR website³ in due course.

³ <http://www.ohchr.org/EN/Issues/Business/Pages/WGSessions.aspx>.

Annex

Methods of work (revised on 30 November 2012)

Functioning of the Working Group

1. Chairperson-Rapporteur

1. The Working Group decided to appoint a Chairperson-Rapporteur every two sessions, rotating between members of the Working Group.
2. The Chairperson-Rapporteur may decide to delegate his/her tasks to other members of the Working Group, following consultation with all other members.
3. The Working Group further decided to appoint a Vice-Chairperson, to fulfil all duties of the Chairperson when the Chairperson is otherwise unavailable. The Vice-Chairperson will normally be that member of the Working Group who will become Chairperson upon the end of the mandate of the current Chairperson.

2. Country mission

4. The Working Group places great importance on outreach and visiting countries and regions to disseminate and support the implementation of the Guiding Principles on Business and Human Rights.
5. The Working Group therefore intends to carry out two official country missions per year following invitations from Member States.
6. Country visits will be conducted in the spirit of promoting constructive dialogue with States and all relevant stakeholders at the national level and to identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles. Reports from official country missions will be submitted to the Human Rights Council. Consideration will be given to regional balance in the choice of country missions.
7. Two members of the Working Group will participate in each country mission. The Chairperson-Rapporteur will decide, in consultation with all other members, which members participate in any particular mission. As per standard practice, the final composition of the visiting delegation will be communicated to the Government concerned during the preparation of the visit.
8. Subject to available funding, additional visits to countries will be conducted by one or more members of the Working Group, following invitations received. Depending on the scope of the visit, and following consultation with the concerned country, the Working Group may request approval to submit reports from such additional country visits to the Human Rights Council.

3. Field work

9. In addition to the official country missions and any other visits to Member States, the Working Group aims to carry out its mandate in a manner that includes significant additional, relevant field work, frequently reaching out, consulting and engaging directly with individuals, communities, business enterprises and associations, Government actors, national human rights institutions and other stakeholders across all regions to inform its work and ensure that any findings and recommendations respond to practical and operational realities on the ground.

10. Individual Working Group members will participate in outreach on the Guiding Principles across all regions as appropriate, for the implementation of the different work streams. Working Group members are not limited to carrying out activities in their respective regions of origin or residence.

4. Multi-stakeholder, consultative and inclusive approach

11. Fully recognizing the value and importance of adopting a multi-stakeholder, consultative and inclusive approach to the implementation of its mandate and following the introductory exchanges with Member States and relevant stakeholders held during its first session, the Working Group intends to continue engaging in regular dialogue and cooperation with States, human rights mechanisms, intergovernmental bodies, relevant United Nations entities, regional and national human rights institutions, representatives of business, civil society organizations, representatives of indigenous peoples and any other relevant stakeholders, including representatives of impacted communities.

12. The Working Group intends to call for input from all relevant stakeholders on general mandate-related issues and/or issues relating to work streams and activities on a regular basis. This will be done in order to solicit information, documentation, good practice, challenges and lessons learned on the implementation of the Guiding Principles. Subject to the specific requirements of different work streams and the availability of adequate funding, the Working Group will also consider other means of consultation with relevant stakeholders, including regional or expert consultations and through country missions. The Forum on Business and Human Rights will also serve as a platform for involving and consulting all relevant stakeholders.

13. The Working Group is mindful of the work carried out by other treaty bodies and special procedure mandates, and will collaborate with these human rights mechanisms and take into consideration existing standards and initiatives developed by international and regional human rights mechanisms, as well as the available knowledge and tools produced to date by United Nations bodies (including the Global Compact), States, business and civil society on the subject of business and human rights.

5. The Working Group's consideration of information received

14. The Working Group is mandated by resolution 17/4 of the Human Rights Council to promote the effective and comprehensive dissemination and implementation of the Guiding Principles. In that context, the Working Group can seek and receive information from all relevant sources.

15. The Working Group welcomes information related to its mandate. Information received from relevant stakeholders will be used, as appropriate, by the Working Group to inform its work and strategy, to identify barriers to the effective implementation of the Guiding Principles and gaps in the protection of human rights in the context of business activities and to inform recommendations made to States, business and other actors, on the implementation of the Guiding Principles.

16. Given the broad scope of its mandate, the vast scale and complexity of the issue at hand and resource constraints, the Working Group is not generally in a position to address individual cases of alleged business-related human rights abuse.

17. In some circumstances, however, the Working Group may exercise its discretion to raise specific allegations that it determines to be particularly emblematic with relevant State authorities and companies, and request clarification or additional information as appropriate.

6. The Forum on Business and Human Rights

18. Resolution 17/4 mandates the Working Group to guide the Forum on Business and Human Rights, aimed at discussing trends and challenges in the implementation of the Guiding Principles and promoting dialogue and cooperation on issues linked to business and human rights. The Forum meets annually for two working days.

7. Reporting

19. The Working Group submits annual reports to the Human Rights Council and the General Assembly, as per Council resolution 17/4.

8. Strategy

20. The Working Group's strategy was laid out in its first report to the Human Rights Council (A/HRC/20/29).
