

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

23 October 2020

**Contribution to the United Nations General Assembly Special Session against Corruption to be held from 2 to 4 June 2021**

The Working Group on the issue of human rights and transnational corporations and other business enterprises (known as the Working Group on Business and Human Rights<sup>1</sup>) appreciates the opportunity to contribute to the United Nations General Assembly Special Session against Corruption (UNGASS). The Working Group welcomes General Assembly Resolution 74/276 and the emphasis placed therein on inclusive preparations for the UNGASS, including through intersessional meetings of the Conference of the States Parties to the United Nations Convention against Corruption.

The Working Group's report to the Human Rights Council (A/HRC/44/43)

The Working Group presented its thematic [report](#) titled “Connecting the business and human rights and anti-corruption agendas”<sup>2</sup> to the 44th session of the Human Rights Council in July 2020. The Working Group submits this report as a contribution to the UNGASS and hopes that it, and the below outline, will help to inform the deliberations.

The report highlights how corruption (e.g. through bribery and trading in influence to gain illegal economic advantages) leads to systemic business-related human rights abuses in various types of commercial activities. For example, when building a dam, companies may pay a bribe to illegally acquire a government license only to circumvent procedures designed to ensure environmental and health safeguards for communities. The report examines for example, how corruption can lead to human rights abuses in land acquisition, infrastructure development, health and pharmaceutical supply chains, and the extractive sector. The report also considers how the human rights challenges posed by corruption in the business context should be addressed, especially in instances where corruption and human rights risks are pervasive. The report notes good practices that can be undertaken to address corruption when it negatively affects human rights in the context of business-related activity, both with respect to preventing such negative impacts as well as in ensuring access to remedy. It also showed how measures aimed at driving responsible business practices in relation to business and human rights, and anti-

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<https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

<sup>2</sup> [https://www.ohchr.org/Documents/Issues/Business/A\\_HRC\\_44\\_43\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Business/A_HRC_44_43_AdvanceEditedVersion.pdf)

corruption, can reinforce each other to ensure coherent policy such as in relation to public procurement, as well as in the regulation of corporate structures.

The [press release](#)<sup>3</sup> accompanying the report warned that the COVID-19 pandemic highlights the deadly cost of corruption and the urgent need for companies to respect human rights. As every sector will face new corruption, business and human rights challenges during the pandemic, States and businesses urgently need to act to prevent corruption by business enterprises in global supply and value chains, and simultaneously undertake anti-corruption efforts and human rights protection. It notes that there are policy tools that can benefit both the anti-corruption goals as well as promote greater business respect for human rights.

The Working Group promotes the implementation of the [Guiding Principles on Business and Human Rights](#): Implementing the United Nations “Protect, Respect and Remedy” Framework<sup>4</sup>, which are structured around three pillars. Key observations in the report, which track the different pillars of the Guiding Principles are as follows:

Pillar I, the State’s duty to protect human rights:

- State agencies that interface with business need to operate in a coherent manner to promote responsible business conduct such as by linking incentives provided to the private sector to both anti-corruption efforts and to business respect for human rights. This can be achieved by States linking public procurement, trade promotion, export credit and other government finance to anti-corruption and human rights commitments.
- The reform of beneficial ownership laws is crucial, so that victims of business-related human rights abuses, as well as tax authorities and law enforcement, have access to information about who is the ultimate owner of a shell company.
- The introduction of targeted sanctions, asset freezes and visa denials for individuals, including economic actors who perpetrate gross human rights abuses and/or engage in corrupt acts, is a positive development that promotes great accountability.
- Mandatory human rights due diligence is vital to the stronger alignment of anti-corruption efforts and the business and human rights agenda; requiring business enterprises to conduct human rights due diligence alongside anti-corruption compliance measures would generate greater respect for human rights, increased legal certainty, and a more level playing field.

Pillar II, the corporate responsibility to respect human rights:

- If a market or sector is rife with corruption, this should raise a red flag that there is also a high risk of human rights abuses and, therefore, business enterprises need to see these risks as intertwined and develop a more holistic approach to these two issues.
- Many companies have implemented anti-corruption compliance programmes (often in response to criminal laws against bribery) but they have largely not

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<sup>3</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26064&LangID=E>

<sup>4</sup> [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

followed suit in relation to human rights, even though the OECD Guidelines for Multinational Enterprises, and the United Nations Global Compact, ask business enterprises to make both anti-corruption and human rights commitments and to then implement these commitments.

Pillar III, access to remedy:

- Corruption is not a victimless crime but the question of who is a victim of corruption remains contested. While legal definitions are narrow, a definition of a victim that acknowledges the extent of the impact that corruption has on the enjoyment of human rights by people or communities impacted by such acts would greatly assist efforts to ensure access to remedy.
- States should consider the human rights impacts of corruption when law enforcement is deciding when and how to sanction business entities who have engaged in bribery and other corrupt acts.

### On-going work

The Working Group is continuing to work on [connecting the business and human rights and anti-corruption agendas](#)<sup>5</sup>. In July 2020 it convened [two discussions](#)<sup>6</sup>, “Connecting the dots between the anti-corruption and business and human rights agenda” and “Beyond compliance – Drilling down on anti-corruption and human rights due diligence processes”. Speakers included business lawyers and civil society actors who work in both anti-corruption as well as in business and human rights fields. These discussions explored how the recommendations in the Working Group’s report can be implemented, and how the business and human rights agenda and anti-corruption efforts can be reinforcing and connected agendas for business, policymakers, and civil society. Already, other organizations have also taken on this topic, including the World Economic Forum Partnering against Corruption Initiative<sup>7</sup> and the Business and Industry Advisory Council to the OECD in partnership with the International Organization of Employers<sup>8</sup>. The Working Group will hold a session focusing on tools that promote both accountability and remedy for victims of corruption on 17 November 2020 at the annual UN [Forum on Business and Human Rights](#)<sup>9</sup>.

### UNGASS

The UNGASS presents an opportunity to advance global thinking on the connections between anti-corruption efforts and the business and human rights agenda, and to drive policy coherence. 2021 will be a critical year for multilateralism, including in relation to addressing the multiple and intersecting effects of the COVID-19 pandemic, combatting

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<sup>5</sup> <https://www.ohchr.org/EN/Issues/Business/Pages/Connecting-business-and-human-rights-and-anti-corruption-agendas.aspx>

<sup>6</sup> <https://www.ohchr.org/Documents/Issues/Business/Eventson20and23July.pdf>

<sup>7</sup> [https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/UNGASS\\_submission\\_World\\_Economic\\_Forum\\_PACI\\_GFC\\_final.pdf](https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/UNGASS_submission_World_Economic_Forum_PACI_GFC_final.pdf)

<sup>8</sup> <https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=147731&token=c0fecaf2120d7faf7e4214377a1754ab8170fd88>

<sup>9</sup> <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2020ForumBHR.aspx>

corruption to deliver the Sustainable Development Goals, addressing long-standing issues relating to equality and diversity, and developing innovations to address climate change.

During the UNGASS, States should:

- Re-commit to the full implementation of the United Nations Convention against Corruption.
- Re-commit to the implementation of the Guiding Principles on Business and Human Rights, given the connections between anti-corruption efforts and the business and human rights agenda outlined in the Working Group's report, and because businesses can be both drivers, and beneficiaries, of corruption.
- Understand both that corruption leads to business-related human rights abuses and that comprehensively addressing these abuses is urgent.
- Acknowledge the importance of addressing the harms caused to rights holders by corruption, and to achieving access to effective remedy.

The Working Group stands ready to engage with the UNGASS and all relevant actors. It hopes this introduction to its recent related work has been of assistance and looks forward to opportunities for collaboration.



Anita Ramasastry  
Chair  
Working Group on Business and Human Rights