



Oral Statement by Mr. Michael K. Addo

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business enterprises

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Mr. President,
Excellencies,
Distinguished delegates,
Ladies and Gentlemen,

I am honoured to present the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the Human Rights Council.

You have before you the Working Group's main report and our three addendum reports. The addendum reports include our observations and recommendations from a country visit to Azerbaijan in August 2014; the report of the African Regional Forum on Business and Human Rights, held in Addis Ababa in September 2014; and a report reflecting on examples of practical experiences presented during the annual Forum on Business and Human Rights in December.

Mr. President,

Firstly, allow me to say a few words about the Working Group's visit to Azerbaijan. The Working Group is grateful to the Government for the invitation and for the support provided towards the organization of the visit. The Working Group is also grateful to the many people that made themselves available to meet with us during the visit.

The report highlights a number of issues which the Working Group found to be of particular importance in the national context. The Working Group learned about efforts under way to combat corruption, including by improving transparency and oversight of public tendering processes. We were also informed about cases of harassment, intimidation or arrest of representatives of civil society organizations and the media who have been reporting on human rights concerns relating to business operations. In this respect, the Working Group underlines the critical role played by an independent civil society and media in promoting transparency and accountability in business operations, particularly where human rights concerns arise.

While noting a number of promising initiatives, the Working Group found that awareness of business and human rights issues and the Guiding Principles on Business and Human Rights amongst key stakeholder groups remained limited. The development of a national action plan on business and human rights would be one important means of raising awareness and identifying protection gaps, and, in this respect, the Working Group welcomes the Government's pledge to develop such a plan.

Distinguished delegates,

I would like to turn to the observations and recommendations from our main report. This report seeks to identify opportunities to strengthen accountability and coherence in global frameworks in support of sustainable development in the coming decades. As set out in our report, global governance frameworks meant to underpin sustainable development need to be fully in line with international human rights standards. This means also ensuring alignment with standards on business and human rights. The UN system, and especially its member States, has a key role to play in ensuring such alignment given the fact that many key processes are member State-driven.

There is broad agreement that the year 2015 presents an historic opportunity for setting out the course for a more just, more equitable and more sustainable future for all.

From the perspective of the Working Group, two fundamental aspects are critical in that regard: Firstly, ensuring accountability for actors that have the capacity to affect sustainable development;

and secondly, ensuring that frameworks and policies at all levels are aligned with international human rights standards.

From across the world there is a strong call that commitment to human rights must be a central pillar in the new development framework. The role and impact of the business sector is a major backdrop, as we are living through the age of globalization, a key feature of which is the growing reach and impact of business enterprises in society. Indeed, the emerging post-2015 framework recognizes the positive role of businesses in the development process but not so much that business activities may also negatively affect the enjoyment of human rights. In the view of the Working Group, it is critical to ensure that recognition of the increased role of business in development is coupled with adequate accountability measures. Achieving effective accountability will require coordinated and converging approaches across global governance frameworks with a “business nexus” to ensure alignment with human rights standards.

A unique opportunity for achieving such alignment is provided by the Guiding Principles on Business and Human Rights that were unanimously endorsed by the Council in 2011.

Indeed, as urged by Secretary-General Ban Ki-moon in his synthesis report on the post-2015 sustainable development agenda: there is a need to “remedy the policy incoherence between current modes of international governance in matters of trade, finance and investment on the one hand, and our norms and standards for labour, the environment, human rights, equality and sustainability on the other.” In the same report, the Secretary-General also stresses that “we should work to ensure investment policies that are in line with the Guiding Principles”.

The historic decision by the Council in 2011 to endorse the UN Guiding Principles created a solid normative platform and important steps towards the convergence needed for a coherent global approach on business and human rights have already taken place in the form of uptake of the Guiding Principles in policy developments at both international and national levels, as explained in our report. Last week we witnessed an unprecedented level of commitment from leaders of the G7 in a declaration highlighting unsafe and poor working conditions among the top challenges facing the world economy, urging the implementation of human rights due diligence in global supply chains, and expressing strong support for the Guiding Principles.

Within the UN system, treaty bodies and special procedures increasingly reference the Guiding Principles. OHCHR, with a mandate from the Council, has taken the lead to deliver guidance to States to enable more consistent implementation of the access to remedy pillar. In the intersection between the Guiding Principles and international labour standards, the Working Group and the ILO collaborate closely to ensure coordination.

Our report identifies other ongoing efforts within the UN system that contribute towards scaling up implementation of the Guiding Principles. Entities such as the UN Global Compact, the UNEP Finance Initiative, and UNCTAD are contributing at the level of awareness raising among stakeholders and building coherence between policy frameworks. Also at policy level, work of the United Nations Commission on International Trade Law – UNCITRAL – has been informed by the Guiding Principles, in particular with regard to the issue of transparency in investor-State dispute settlement cases.

At country level, UNDP and OHCHR have played an important role in supporting processes for developing national action plans on business and human rights. And at the regional level UNDP and UN regional economic commissions have supported the Working Group in convening regional fora on business and human rights, most recently in Africa in September 2014. The main conclusions from that event are contained in the addendum report on the regional forum.

Still, as underlined by the Secretary-General in his reports on the contribution of the UN system to advancing the Guiding Principles, the UN as a whole is lagging behind many other actors. Even the

entities that are making a positive contribution could do more to help scale up implementation and coherence across global frameworks. Alignment with new tools aimed to support implementation of the Guiding Principles could support faster progress. One key area is corporate reporting. Global governance institutions whose standards have direct implications for corporate entities can make progress towards coherence in corporate reporting by adopting tools such as the reporting framework developed by the Shift Project. The most fundamental challenge addressed in our report is that of achieving policy coherence by States. This is especially relevant in the context of State-driven processes at the UN.

This matter of coherence across global governance frameworks is succinctly captured in the Guiding Principles. Principle 9 requires States to ensure that they maintain policy space to meet their human rights obligations when pursuing business-related policy objectives, for instance through investment agreements or contracts. Principle 10 sets out that States, when acting as members of multi-lateral institutions that deal with business-related issues, should seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights. Further it stresses the need for States to draw on the Guiding Principles to promote a shared understanding and advance international cooperation to prevent and address business-related human rights impacts.

Against this background, our report highlights a number of concrete opportunities that States should act on.

In the area of investment, a practical way for States to meet Guiding Principle 9 would be to apply the principles for responsible contracts. These principles, which were developed as a tool to complement the Guiding Principles, provide a checklist for government and commercial negotiators on how to manage human rights risks in the negotiation of State-investor contracts. They should also ensure that bilateral investment treaties do not include provisions that may constrain the State's ability to adopt legitimate policy reforms.

A key issue at the heart of current controversies about the international investment regime is the use of provisions to protect investors and subject disputes to binding international arbitration. Such provisions have, in a number of cases, enabled investors to sue Governments for policies and regulations introduced to pursue public interest goals, including new labour standards and environmental protection. A major concern is the confidential and non-participatory nature of investor-State dispute settlement cases. The Working Group's report highlights a significant new opportunity for addressing this gap: the UN Convention on Transparency in Treaty-based Investor-State Arbitration, which was opened for signature on 17 March this year. An obvious step for States to remedy incoherence between current modes of investment with norms for good governance and human rights, would be to sign and ratify the Convention.

The integration of the Guiding Principles in the area of multilateral trade frameworks, notably in the context of the World Trade Organization, remains underexplored. But opportunities exist. A concrete opportunity would be to align international rules and standards for public procurement with the Guiding Principles. This could be a potential game-changer given the high share of public procurement in the gross domestic product of countries across all regions. There is momentum in several jurisdictions for integrating human rights requirements into public procurement procedures, and several organizations are developing practical guidance informed by the Guiding Principles. States should support the movement towards greater coherence and convergence – and level the playing field for business across markets – by setting the Guiding Principles on the agenda in WTO discussions on public procurement.

Member States also have a key role in ensuring that international financial institutions align their policies with human rights standards. A case in point is the current review of the World Bank's

Environmental and Social Framework for its lending activities. While the World Bank's private-sector lending arm, the International Finance Corporation, has incorporated elements of the Guiding Principles into its social and environmental sustainability framework, the Bank itself has yet to do so. Our report highlights the possible risks of a failure to align the World Bank Framework with the Guiding Principles. Member States should take note of these.

Finally, States negotiating the post-2015 development framework should take the Guiding Principles into account. Failure to do so would be a significant lost opportunity to ensure that the increased role of the private sector in driving sustainable development is also coupled with the necessary accountability.

In this context, the Working Group welcomes the reference to the Guiding Principles in the draft outcome document of the Conference on Financing for Development due to be held next month. It would be critical to ensure that this reference is kept in the final text. With regard to the sustainable development goals, our report highlights areas where the Guiding Principles are of direct relevance and would add value in strengthening coherence. Three specific aspects are worth highlighting:

- It is envisaged that public-private partnerships would play a key role in the emerging development framework. But it is not made clear how the private sector is expected to contribute to the achievement of the sustainable development goals in a way that is consistent with human rights standards. The floor for such partnerships should be the Guiding Principles. They should reiterate the State's duty to foster respect for human rights by businesses through adequate regulation and policies, and the minimum expectation that businesses respect human rights wherever they operate.
- Sustainability reporting is another key aspect of how the private sector is expected to support the development goals. Accounting for how companies address human rights impacts provides a key measure of transparency and accountability. If companies do not report on their potential or actual impacts on the rights of individuals, they could be missing critical social and environmental impacts. Adding a reference to the Guiding Principles would contribute to aligning the goals with international standards by promoting meaningful disclosure by companies.
- The sustainable development goals call for public procurement practices that are sustainable. Here too, the goals and their implementation at the national level should be in line with the Guiding Principles, and include the clear expectation that States adopt practices that are not only sustainable but explicitly integrate human rights considerations.

Distinguished delegates,

The Working Group hopes that the Guiding Principles will be adequately reflected in the final commitments by States, not least in post-2015 Declaration. States should set a clear vision for connecting the increasing role of the private sector in development with accountability and agreed standards for business practices aligned with human rights.

The agenda goes beyond negotiations on the development goals. Other ongoing work provides opportunities for bridging existing incoherence between governance in areas of trade, finance and investment on the one hand, and international labour and human rights standards. Practical challenges remain, though, and the Working Group intends to dedicate parts of the 2015 Forum on Business and Human Rights, in November, to engage key stakeholders in a dialogue on many of these issues.

Mr. President,

In moving forward, all stakeholders must play their part. The Working Group has identified ways that entities in the UN system could support. Businesses also must take steps to meet the expectations set out in the Guiding Principles. But the onus in the current context is not least on States. States should seize the opportunity to move towards more coherent approaches in global governance, and ultimately to improve human rights outcomes in support of sustainable development.

Thank you for your attention.