

THE UN GUIDING PRINCIPLES AND THE WORKING GROUP ON BUSINESS AND HUMAN RIGHTS

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Rights



INTRODUCTION

- Comfort Zone
- Academic Exercise
- Taster of Issues

- 3 Parts
 - Justification
 - Working with the Mandate
 - The Annual Forum

THE SEARCH FOR A STRATEGY

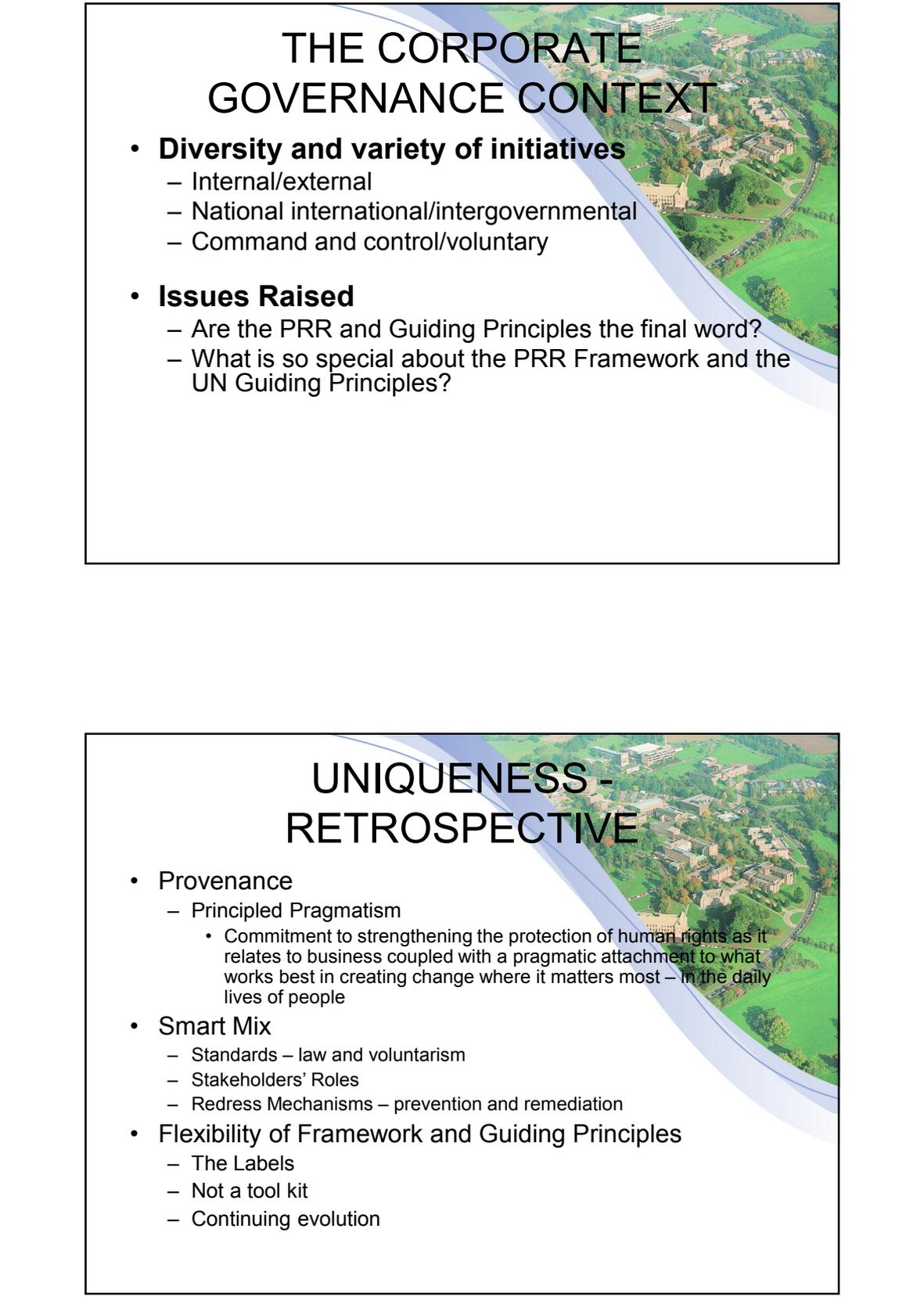


- Key Turning Points
 - 2005 – The Ruggie Mandate
 - To identify and clarify standards of corporate responsibility and accountability with regards to human rights
 - 2008 – The Protect, Respect and Remedy Framework
 - State duty to protect
 - Corporate responsibility to respect
 - Access to remedy
 - 2011 – The Guiding Principles
 - 31 principles to operationalize the PRR Framework
 - 2011 – The Working Group on Business and Human Rights

THE GUIDING PRINCIPLES



- State Duty to Protect
 - Steps to prevent, investigate, punish and redress
 - Policy Coherence
 - State-Business Nexus
 - Conflict affected area
- Corporate Responsibility to Respect
 - Avoid infringing on the rights of others
 - Know and show
- Access to Effective Remedy
 - Judicial and non-judicial remedy
 - Corporate Grievance Procedure



THE CORPORATE GOVERNANCE CONTEXT

- **Diversity and variety of initiatives**
 - Internal/external
 - National international/intergovernmental
 - Command and control/voluntary
- **Issues Raised**
 - Are the PRR and Guiding Principles the final word?
 - What is so special about the PRR Framework and the UN Guiding Principles?

UNIQUENESS - RETROSPECTIVE

- **Provenance**
 - Principled Pragmatism
 - Commitment to strengthening the protection of human rights as it relates to business coupled with a pragmatic attachment to what works best in creating change where it matters most – in the daily lives of people
- **Smart Mix**
 - Standards – law and voluntarism
 - Stakeholders' Roles
 - Redress Mechanisms – prevention and remediation
- **Flexibility of Framework and Guiding Principles**
 - The Labels
 - Not a tool kit
 - Continuing evolution

UNIQUENESS - PROSPECTIVE

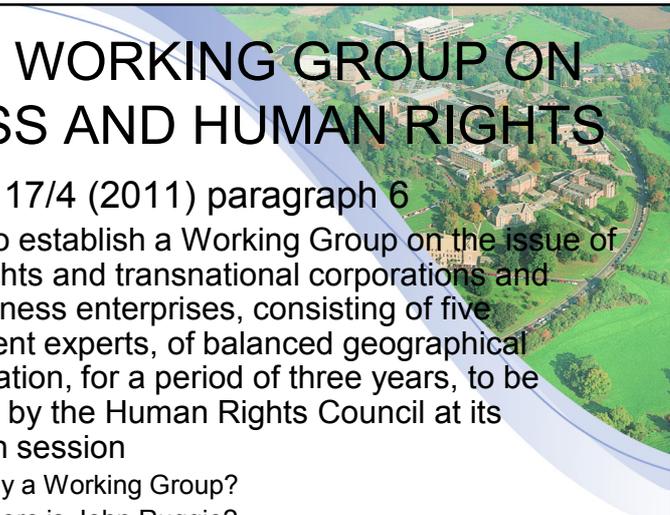


- Goodwill and support
- Establishment of the Working Group on Business and Human Rights
- Uptake
- Final Word?
- Lessons for International law

SAMPLE ISSUES



- Links with other corporate governance regimes
- Implications of due diligence
- Language of human rights and language of business
- Level playing field



THE UN WORKING GROUP ON BUSINESS AND HUMAN RIGHTS

Resolution 17/4 (2011) paragraph 6

Decides to establish a Working Group on the issue of human rights and transnational corporations and other business enterprises, consisting of five independent experts, of balanced geographical representation, for a period of three years, to be appointed by the Human Rights Council at its eighteenth session

Why a Working Group?
Where is John Ruggie?
Lessons from Ruggie Era



WHY A WORKING GROUP?

- The Enormity of the task
- Geo-political legitimacy necessary for implementation
- Cross-disciplinary Expertise – necessary for implementation
- Lessons from the Ruggie Era

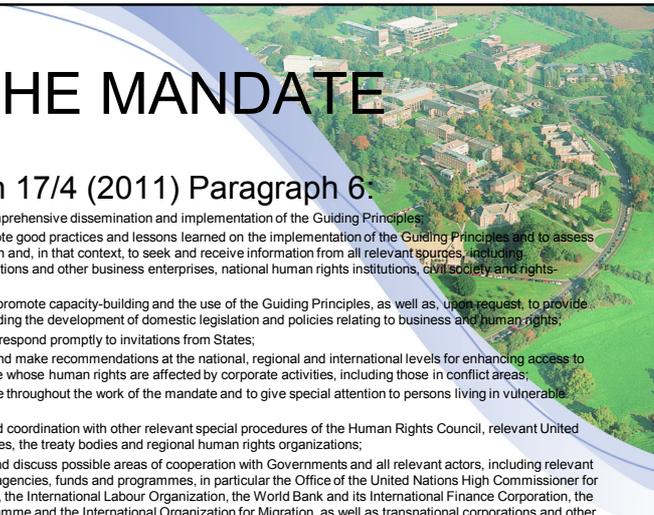
WHERE IS JOHN RUGGIE?

- Ruggie and the Working Group
- Ruggie as a TEAM
- University – Teaching and Research
- Expert Advisory
 - SHIFT Institute
 - Institute of Human Rights and Business
 - ACCESS
 - Law Firms
- Conferences
- Forum

LESSONS FROM RUGGIE ERA

- Process
 - Consultations – multi-stakeholder and inclusiveness
 - Dialogue and participation
- Substance
 - Evidence-based
 - Common understanding and coherence across disciplines as well as across political and legal systems
- Character
 - An Evolving Regime

THE MANDATE



- HRC resolution 17/4 (2011) Paragraph 6:
 - a) To promote the effective and comprehensive dissemination and implementation of the Guiding Principles;
 - (b) To identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to assess and make recommendations thereon and, in that context, to seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises, national human rights institutions, civil society and rights-holders;
 - (c) To provide support for efforts to promote capacity-building and the use of the Guiding Principles, as well as, upon request, to provide advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights;
 - (d) To conduct country visits and to respond promptly to invitations from States;
 - (e) To continue to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas;
 - (f) To integrate a gender perspective throughout the work of the mandate and to give special attention to persons living in vulnerable situations, in particular children;
 - (g) To work in close cooperation and coordination with other relevant special procedures of the Human Rights Council, relevant United Nations and other international bodies, the treaty bodies and regional human rights organizations;
 - (h) To develop a regular dialogue and discuss possible areas of cooperation with Governments and all relevant actors, including relevant United Nations bodies, specialized agencies, funds and programmes, in particular the Office of the United Nations High Commissioner for Human Rights, the Global Compact, the International Labour Organization, the World Bank and its International Finance Corporation, the United Nations Development Programme and the International Organization for Migration, as well as transnational corporations and other business enterprises, national human rights institutions, representatives of indigenous peoples, civil society organizations and other regional and subregional international organizations;
 - (i) To guide the work of the Forum on Business and Human Rights established pursuant to paragraph 12 below;
 - (j) To report annually to the Human Rights Council and the General Assembly.

CHALLENGES



- The Mandate of the Working Group
- Maintaining the Momentum
- Awareness
- Changing Mindsets and Ways of Conduct
- Communications (Complaints)
 - ... in some circumstances, the WG 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 additional information as appropriate. [3rd session]
- Convergence of Practice and the integrity of the Guiding Principles

MANDATE AS A CHALLENGE

- The Enormity of the Task
 - The Maths
 - Multiply by a factor of 10
 - Resources – human and financial
- Secondary Role
 - Promote
 - Identify, exchange and share
 - Support
 - Explore
 - Co-operate

OTHER MANDATE CHALLENGES

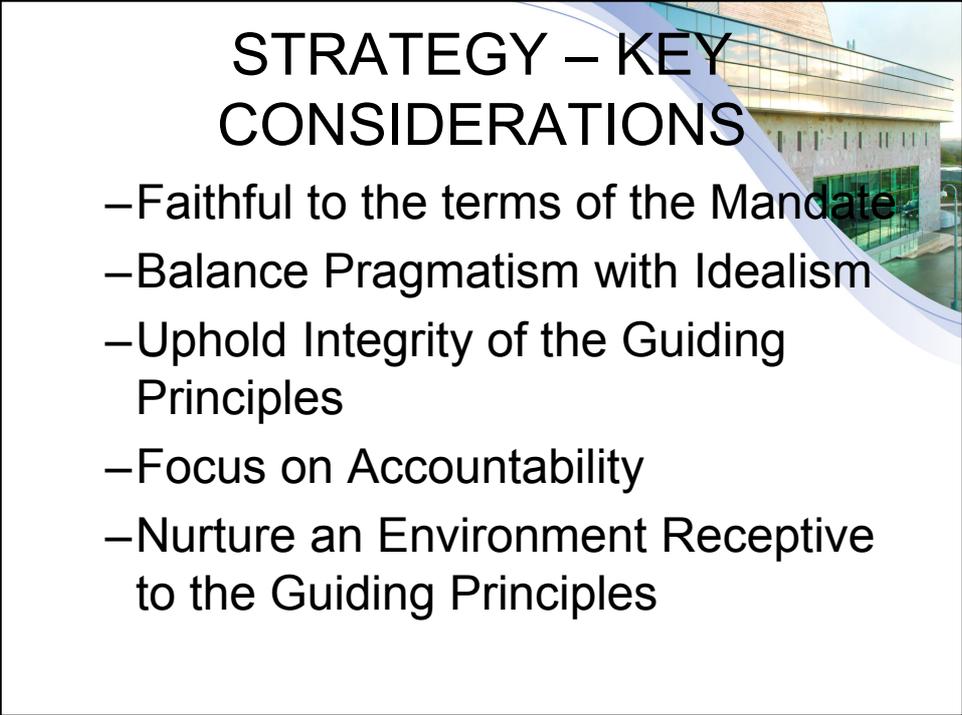
- Capacity Building
 - Contradictions and conflicts
- The Gender Perspective
- Dialogue and cooperation with all stakeholders, including UN Bodies
 - Treaty Bodies (CRC; CERD; CESCR)
 - Special Procedures
 - Specialized Agencies
 - ILO
 - UNCTAD

OPPORTUNITIES

- Goodwill and Support
 - All Stakeholders
- Ride the Wave
 - Governance Regimes
 - Remedy Mechanisms
 - Existing Processes – Due Diligence
- Turn Weakness into a Strength
 - Secondary Mandate – let others do the work
- Forum
- Country Visits

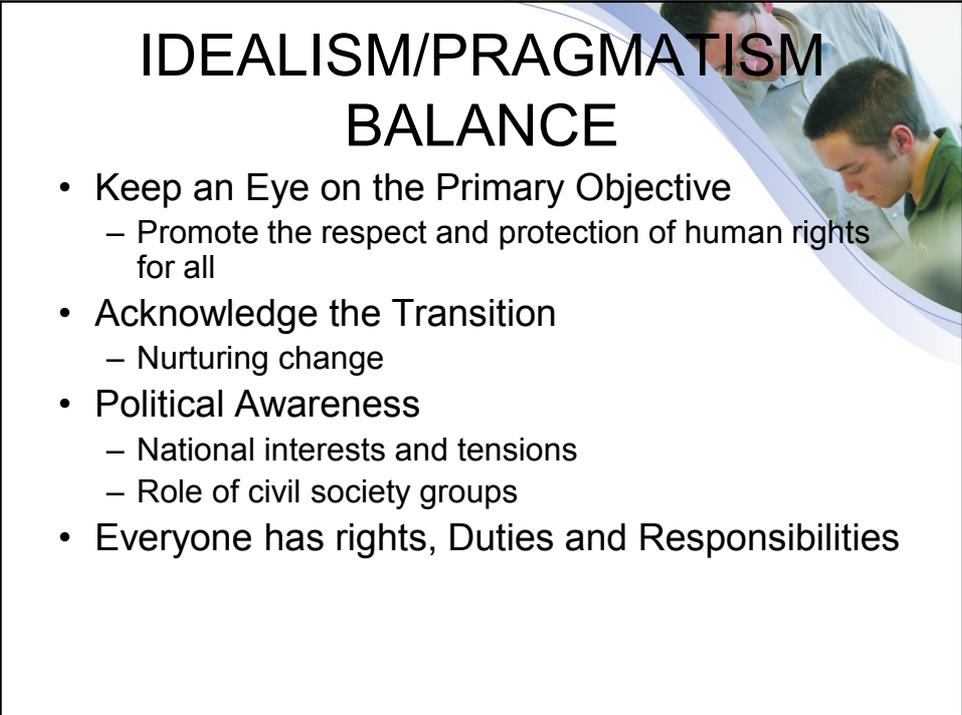
The STRATEGY

- **Three Parts:**
- **The Key Considerations**
- **Define Work Streams**
- **Working Group Projects**



STRATEGY – KEY CONSIDERATIONS

- Faithful to the terms of the Mandate
- Balance Pragmatism with Idealism
- Uphold Integrity of the Guiding Principles
- Focus on Accountability
- Nurture an Environment Receptive to the Guiding Principles



IDEALISM/PRAGMATISM BALANCE

- Keep an Eye on the Primary Objective
 - Promote the respect and protection of human rights for all
- Acknowledge the Transition
 - Nurturing change
- Political Awareness
 - National interests and tensions
 - Role of civil society groups
- Everyone has rights, Duties and Responsibilities

INTEGRITY, ACCOUNTABILITY AND RECEPTIVE ENVIRONMENT



- Integrity
 - Promote Convergence
 - Avoid Duplication
 - Show Progress
 - Balanced Development of all 3 Pillars
 - Follow the evidence
- Accountability
 - Access to remedy – clarify, mainstream and integrate
- Receptive Environment
 - Make GPs relevant to all
 - Cultivate new audiences
 - Develop a ‘Business Case’

STRATEGY – WORK STREAMS



- Global Dissemination
 - Reach New Audiences
 - Apply Multipliers and Catalysts
 - Institutions with effective accountability mechanisms; demonstrate a track record of compliance; reach large actors
- Promoting Implementation
 - Focus on Indigenous Peoples and other vulnerable Groups
 - Identify and Share Good Practice
 - Provide Guidance on GPs in Action
- Embed the GPs in Global Governance Initiatives



STRATEGY - PROJECTS

Strategic Partnerships

Multipliers and Catalysts

Inter-governmental Organisations

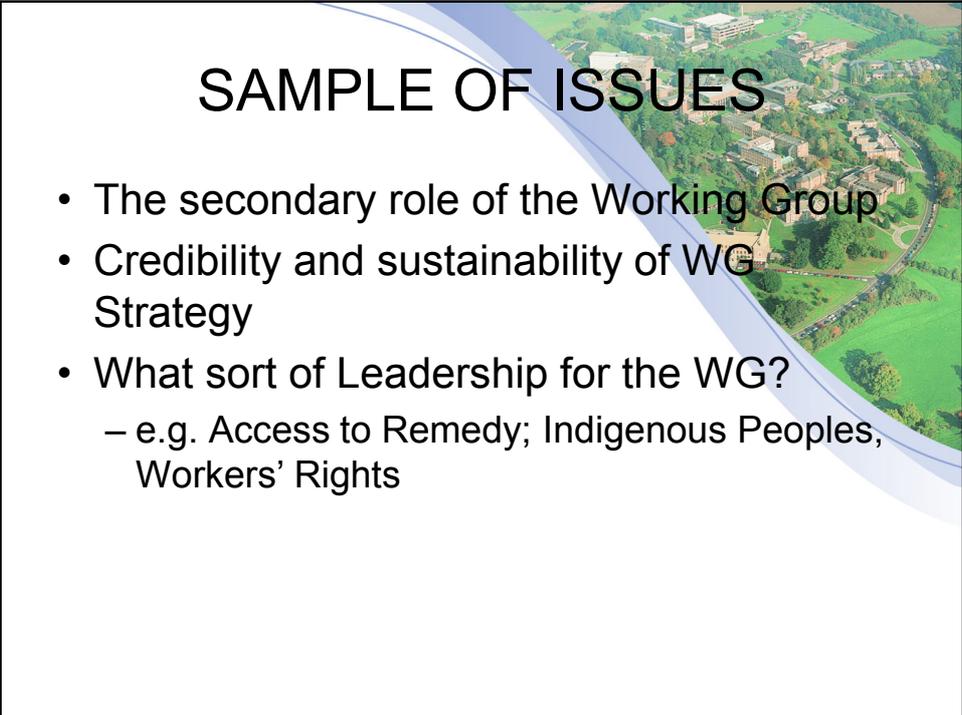
EU; ASEAN; AU; IFC; OECD; COE

Business Associations; Professional Bodies,
Research Institutions

Internal Projects [IPs; NAPS; AtR; Global Governance;
Interpretative Guidance]

Guide Annual Forum

Regional Fora/Consultation



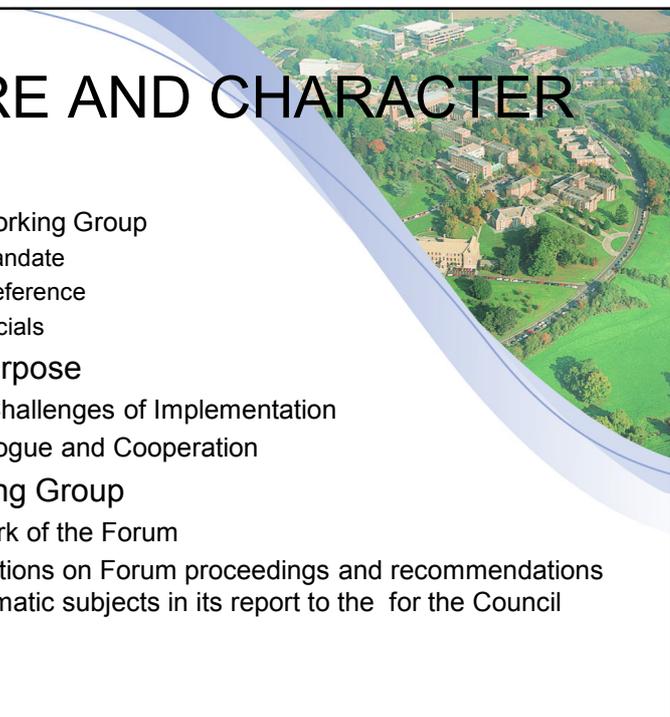
SAMPLE OF ISSUES

- The secondary role of the Working Group
- Credibility and sustainability of WG Strategy
- What sort of Leadership for the WG?
 - e.g. Access to Remedy; Indigenous Peoples, Workers' Rights



THE ANNUAL FORUM

- HRC resolution 17/4 (2011)
 - 12. Decides to establish a Forum on Business and Human Rights under the Guidance of the Working Group to discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faces in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices.
 - 13. Also decides that the Forum shall be open to the participation of States, UN mechanisms, bodies and specialised agencies, funds and programmes, intergovernmental organisations, regional organisations and mechanisms in the field of human rights, national human rights institutions and other relevant bodies, transnational corporations and other business enterprises, business associations, labour unions, academics and experts in the field of business and human rights, representatives of indigenous peoples and non-governmental organisations in consultative status with ECOSOC and many more



NATURE AND CHARACTER

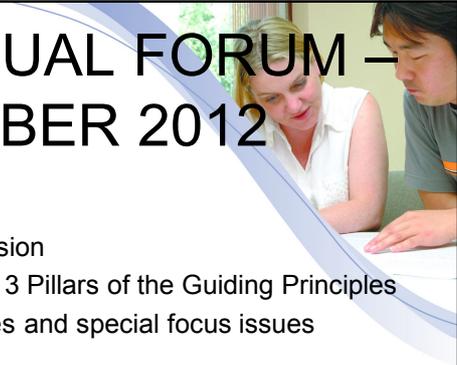
- Ownership
 - Council or Working Group
 - Outside Mandate
 - Terms of reference
 - Forum Officials
- Object and Purpose
 - Trends and Challenges of Implementation
 - Promote Dialogue and Cooperation
- Role of Working Group
 - Guide the work of the Forum
 - Include reflections on Forum proceedings and recommendations for future thematic subjects in its report to the for the Council

ROLE OF THE WORKING GROUP



- Planning and Preparation
 - Stakeholder consultation
 - Draw on Expert knowledge
- Funding
- Priorities and Themes
 - Trends and challenges
 - Opportunity for learning through dialogue
 - Lessons for further development

THE FIRST ANNUAL FORUM – 4-5 DECEMBER 2012



- Outline
 - High Level Panel/Opening Session
 - Parallel Sessions reflecting the 3 Pillars of the Guiding Principles
 - Sessions on Trends, Challenges and special focus issues
 - Memberships of Sessions
- Attendance
 - 1000 participants – 80 countries, 50 government representatives, 150 business enterprises, 170 civil society groups, 5 international trade union groups, 20 NHRIs, 15 UN Specialized Agencies, 17 International and Regional Institutions and an equal numbers of men and women.

THE HIGH LEVEL PANEL



- **Primary Actors**

- President of the Human Rights Council
- The Chair of the Annual Forum – John Ruggie
- The Chair of the UN Working Group
- The UN High Commissioner for Human Rights
- The US ASS for Democracy and Human Rights
- The EU Special representative for Human Rights
- The Deputy Director-General for Policy (ILO)
- Deputy Secretary-General of FIDH
- Chief Executive Officer, Sakhalin Energy Investment Company

HIGH LEVEL PANEL



- **Objective**

- Reflect true character of subject – multi-layered, multi-dimensional and multi-stakeholder
- Level of importance of subject as a matter of policy and practice for all – the UN and other inter-governmental organisations; governments; civil society; businesses; academic community.
- Define context of issues for the rest of Forum

- **Outcome of Issues**

- Alignment of governance systems
- Capacity building
- Egregious violations of human rights
- Accountability and access to remedy
- States should work individually and collectively
- Implementation requires planning (National Action Plans)
- Do not forget the victims
- Businesses can implement the Guiding Principles

UNIVERSITY OF ZURICH FOCUS AND REVIEW GROUPS

- **4 Groups**
 - State Duty to Protect
 - Corporate Responsibility to Respect
 - Access to Remedy
 - Special Interest Group
- **Issues**
 - Evidence of activity
 - Challenges identified and Highlighted
 - Proposals for further development of Guiding Principles and the 2013 Forum on Business and Human Rights.

FINAL REMARKS

- **Living in time of change**
 - Globalisation and transition
 - Whither the new actor?
- **Learning to do things differently**
 - Internally and externally
 - The changing faces and phases of law
- **The importance of the human dimension**
 - What is the purpose of life?
- **Where will it all end? Should it?**