Statement at the end of visit to Ghana by the UN Working Group on Business and Human Rights
Accra, 17 July 2013

Ladies and gentlemen,

Good afternoon. In our capacity as members of the United Nations Working Group on Business and Human Rights, we have today ended our ten-day mission to Ghana. We are grateful to the Government of Ghana for having invited us to explore progress, challenges and opportunities in the implementation of the Guiding Principles on Business and Human Rights.

We would like to express our deep appreciation to all of our hosts for your warm welcome. We are especially grateful to the Ministry of Foreign Affairs and Regional Integration for convening meetings with a range of ministries, and to the UN agencies, business representatives, civil society and trade unions that helped arrange meetings and site visits.

During our visit, we met with Government authorities, including the Minister of Foreign Affairs and the Minister of Justice, the Attorney General; as well as officials from several departments of the Ministries of Lands and Natural Resources, Trade and Industry; Employment and Labour Relations; Gender, Children and Social Protection; and the Environmental Protection Agency. The Working Group further met with over twenty Members of Parliament from the Parliamentary Select Committees on Trade, Industry and Tourism; Lands and Forestry; Mines and Energy; Food, Agriculture and Cocoa Affairs; and Youth, Sports and Culture. We also met with the Ghana Commission on Human Rights and Administrative Justice, and with representatives from business, civil society, trade unions and UN agencies in Ghana. In addition to the meetings in Accra, we travelled to the Central and Ashanti regions to meet with communities and businesses to examine more closely the mining and cocoa sectors. In all our meetings, we found a genuine willingness to discuss both progress and challenges amidst Ghana’s journey towards inclusive and sustainable economic growth.

In our statement today, we are offering some of our initial impressions and observations from our 10-day visit. Overall, we have found that Ghana has a relatively strong legal framework in place, but that there is a need to strengthen the capacity of institutions that deal with the private sector on the use of human rights norms and standards, including the Guiding Principles.

As the economy expands, it is further necessary to address the challenge of managing land ownership and land use, especially in the intersection between traditional forms of land tenure through chiefs and international standards on land acquisition, access to land, rural and urban planning, and resettlement.

While some progress has been achieved on addressing child labour in parts of the informal sector, more support is still needed in agriculture, fishing, small-scale mining and street trading to ensure that worst forms of child labour are eradicated. Progressively working with the informal sector so that human and labour rights standards are upheld, including with respect to minimum wage, working hours, and that youth and women are treated with dignity, is indispensable. Ghana’s decent
work agenda anchored in international labour conventions provides a useful framework, though
more effort is required by all stakeholders to give it practical effect.

It should be stressed that these observations are our immediate, preliminary impressions. Over the
coming months, we will continue to explore and receive information on these issues, and we
appreciate the offers of follow-up that have been extended to us from all stakeholders.

Preliminary observations

Economic boom requires strengthened institutions to prevent adverse impacts

Ghana is currently at an important stage in its economic development, with a GDP growth of 8%
projected for 2013, placing it among the top 20 fastest-growing economies in the world, driven by
revenues from the extractives sectors as well as high commodity prices. UNCTAD ranks Ghana
among the top three destinations in Africa for foreign direct investment. As the national economy
grows, both thanks to the growth of the domestic market and regional and international investment,
it will be critical for Ghana that decisions about how to spend the country’s growing revenues are
made transparently and translate into realization of human rights and decent job opportunities for
the Ghanaian people. There is also an urgent need to ensure that material adverse human rights
impacts from new economic sectors are identified, addressed and that prevention measures are
devised.

The Working Group received information that while the Government has increased investment in
State institutions promoting economic activity and investment, the funding of some key institutions
of the State charged with protecting rights, including departments in the Ministry of Employment
and Labour Relations —in particular the Labour Commission and the Labour Inspectorate—and the
Ministry of Gender, Children and Social Protection, have not benefited from similar investment,
constraining their capacity to effectively follow-up on compliance with legislation and regulations.

Furthermore, there is a need to ensure that human rights standards are effectively integrated into
those institutions that aim to promote foreign investment and facilitate links to global markets, in
both new sectors—such as oil—as well as traditional sectors. The Working Group notes that the
Parliament has recently debated a bill on the Ghana Investment Promotion Centre. This is an
institution that could serve as an effective entry point for ensuring compliance with the Guiding
Principles among foreign investors. Other agencies that aim to attract and oversee investment, such
as the Ghana Free Zones board, should also integrate international human rights norms. Bilateral
trade and investment treaties should not constrain the Government of Ghana’s policy space for
evolving the regulatory framework to protect rights, or for ensuring the progressive realization of
economic and social rights. The Commission on Human Rights and Administrative Justice could play
a role during review processes of draft investment and trade agreements.

The Working Group would recommend that both sets of institutions – those charged with protecting
rights as well as those promoting foreign investment and exports – should enter into regular
dialogue on corporate governance and conduct in Ghana’s context with business leaders and with
umbrella organizations—including the Ghana Employers Association, the Ghana Association of Industries, the Chamber of Commerce and the Chamber of Mines—around human rights impacts, and on the promotion of responsible business conduct that is respectful of national laws and international norms.

At the same time, companies present in Ghana have an independent responsibility to respect human rights, which includes ensuring that they do not cause, contribute to or become directly linked to any human rights violations through their business relationships. Some business associations have taken steps to promote responsible business conduct, but overall, the Working Group found a very low awareness among local businesses and business associations of their actual and potential impacts on human rights, and of their responsibility to respect rights and remedy impacts as laid down in the Guiding Principles.

In this regard, the Working Group was encouraged to learn that the Ministry of Trade and Industry is drafting a national policy on Corporate Social Responsibility. The Working Group recommends that this policy should place the UN Guiding Principles as the minimum benchmark for foreign and domestic businesses. Special attention should be paid to child labour in informal agribusiness, health and safety standards in factories, respecting the legal minimum wage, the rights of casual workers, the rights of workers to organise and bargain collectively, and discrimination against women, especially those of child-bearing age. Risks of causing or contributing to adverse impacts in these areas are likely to increase in the supply chain as it stretches into the informal sector. Together with better implementation of Ghana’s decent work agenda by the Ministry of Employment and Labour Relations, unions and employers’ organisations, the formulation of the new CSR policy can be an opportunity for Ghanaian and foreign business leaders to demonstrate enlightened leadership. At the same time, to ensure appropriate alignment of efforts to address risks of adverse human rights impacts from business activities, the Government of Ghana should ensure coordination of implementation of the Guiding Principles between different ministries.

The Working Group was also encouraged to learn about the AKOBEN programme by the Environmental Protection Agency (EPA) - a creative exercise of public benchmarking in corporate conduct that appears to be taken seriously by business. It is a good complement to the deployment of inspectors on the ground. Currently, the programme covers around 116 companies in the mining and manufacturing sectors. But the list is set to grow at a fast pace, and EPA will need the appropriate resources to keep up. Strategic sectors requiring environmental impact statements, such as oil and infrastructure, should be rated here too. The Working Group especially recommends that the planned update of the AKOBEN framework integrates the Guiding Principles. In general, EPA’s role of granting environmental permits makes it a key technical gatekeeper of prevention and compliance in the area of business and human rights. In this context, the Working Group also notes that economic and social impact assessment frameworks should also include chapters on human rights impact assessments, in line with the Guiding Principles and as relevant to material risks in Ghana.
Building effective institutions for the protection of rights also includes ensuring the effectiveness of the Government’s efforts to reduce corruption, particularly in entities that regulate, monitor and enforce business compliance with relevant norms and standards to protect rights. The Working Group would particularly encourage such efforts to focus on integrity of officers involved in local law enforcement at the district or municipal level, and the judicial sector. Additionally, the Government should support cultural awareness of the issue of corruption and increase access to information regarding business activities.

A vibrant and active civil society engaged on these issues is critical to advocate for progress as well as to monitor implementation by Government and business of their respective duties and responsibilities. The Working Group met with civil society organisations that were actively engaged on several of the issues covered in this statement. The Working Group was pleased to hear of increased dialogue between the Government, the private sector, trade unions, and civil society on these critical issues. Such dialogue must not only take place in Accra; the Working Group also encourages more multi-stakeholder dialogue at the district and local levels.

**Impacts from oil and gas sector**

The commencement of oil production, now at more than 100,000 barrels per day, has contributed to Ghana’s rapid growth, and there is great expectation in Ghana and the international community that the sector will continue to grow. The national debate is currently captured by the development opportunities that will follow oil rents, and for which transparency will be key. The country’s leadership is conscious of the need to balance social and infrastructure investments with the revenues derived from this sector. However, the national dialogue should aim for a more detailed public understanding of the industry’s impacts. For example, the Working Group met with representatives from canoe owners’ associations, who related how the exclusion zones around oil rigs, which are partly related to safety standards, and the movements of oil vessels are negatively impacting their livelihoods. Some stakeholders noted that while environmental impact statements include provisions for detailing impacts on fishing, the assessments that had been carried out did not sufficiently engage fishing communities. The Working Group notes that organizations such as local canoe owners’ associations would be a relevant entry point for dialogue between oil and gas companies and impacted communities.

**Land acquisition, land use, resettlement and stakeholder engagement**

As the economy grows, there will inevitably be a growing demand for access to land, whether for agriculture, extractives, infrastructure or manufacturing. The Working Group received information on land use and resettlements that did not seem to meet international standards to ensure appropriate access to information, participation in decision-making, and ensuring that communities, including women, had been able to adequately replace former agricultural activities with new sustainable livelihoods.

Moreover, due to Ghana’s complex land tenure laws and customs, and the fact that few land users are land owners, the Working Group received information of persons that were resettled that had
received insufficient compensation for loss of access to land. The Working Group was informed that this disproportionately affected women, who have less access to land and security of tenure for land that they use for farming.

The on-going project on improving information systems on land titling, supported by the World Bank, should be aligned with the Guiding Principles, in order to help those engaged in private and public economic activities understand and better manage any potential adverse impacts from the allocation of land to infrastructure or private-sector development.

The Working Group was struck by the focus of most stakeholders on the compensation element of resettlement, ignoring other very important aspects with regards to participatory processes of planning, standards or disclosure of information, verification of community understanding of the information given to them, quality of housing, location, access to health, education, transport, services and livelihoods, that should leave communities no worse off than prior to the resettlement, despite the provisions in the legal framework to address such issues.

The Government and companies wishing to purchase land should ensure that communities are involved and can participate in the planning process. Furthermore, that they receive support and information on potential impacts in a timely, transparent, and accessible fashion, in order to be able to make collective decisions with regards to sale of land. The Working Group notes that while the Environmental Protection Agency’s regulations on Environmental Impact Assessments require that information about possible impacts be made public to affected communities, it seems that in practice, such information is frequently not given in a manner that local communities can easily access. In this regard, the Working Group wishes to emphasise the requirements in the Guiding Principles that business enterprises engage with affected stakeholders in a meaningful way in order to assess potential impacts and address risks.

Finally, the Working Group received information that negotiations with regards to land acquisition and resettlement often involved primarily the local chiefs, who are usually the owners and custodians of the land under customary law. While acknowledging customary land ownership and management, the Working Group has learned through its fact-finding that some chiefs have not been able to identify the rights of all those who use or rely on communal lands, or to communicate transparently with communities and exercise constructive leadership, particularly in the protection of vulnerable groups. The process of negotiating acquisition of land and resettlement should involve other stakeholders, including women within communities, as well as any minorities or persons at higher risk of vulnerability, who may be particularly impacted by the land acquisition and resettlement.

There are established standards in this regard including the UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests as well as World Bank and IFC standards that private companies that wish to acquire land for their economic activities should follow. The Government in turn should build the capacity of local authorities to apply such standards and ensure that the rights of communities, including those of land users, including women, are respected.
Addressing impacts from the mining sector

Mining has been present in Ghana for several hundred years. The Working Group heard from stakeholders of both the importance of the mining sector for the Ghanaian economy, as well as its impacts. The Working Group received information pertaining both to large scale mining operations, as well as to small scale mining.

The Working Group notes that while the legal framework to prevent negative impact from mining activities is relatively strong, there are gaps in the implementation by both public and private sector actors. The Working Group met with mining communities that reported that mining operations had led to a loss of livelihood and to impacts on water and crops, but also expectations that companies would take on government roles, such as in creation of roads, schools and hospitals. In this context, the Guiding Principles clarify the responsibilities of the various actors: States have a duty to respect, protect and fulfil human rights, whereas companies have a responsibility to respect human rights, which means taking concrete actions to prevent harm to rights, and to remedy negative impacts when they occur.

The Environmental Protection Agency’s AKOBEN initiative is also an important tool to measure the performance and impacts of large-scale mining operations. The Africa Mining Vision and the ECOWAS directive on mining provide blueprints for responsible mining that is respectful of human rights within the continent. Both the Government of Ghana and mining companies should proactively engage with the process and support their implementation in Ghana.

Small scale mining is responsible for between 20 and 30 per cent of gold production in Ghana. While many small-scale mining operations are legal and regulated, a large part, also described as “galamsey”, is also carried out without the adequate permits. This economic activity, operating outside of Ghanaian laws, has particularly negative impacts on communities, including the use of child labour and the contamination and destruction of land, forests and rivers used by nearby communities. The Working Group has received reports of armed violence, including killings, linked to this sector, as well as an increase in corruption. Moreover, the Working Group was informed of a trend of farmers abandoning and destroying their farms to take part in galamsey, children abandoning school, as well as chiefs giving over the use of land to illegal mining activity.

The President has created an inter-ministerial Task Force to address the phenomenon. Both the Government and the gold industry have a responsibility to ensure that human and labour rights considerations are integrated in their responses. At the same time, addressing the root factors of why individuals engage in galamsey will require investing in support for rural communities so that they are able to increase their sources of income from legal activities.

Integrating human rights is also important with respect to use of public security forces in the response of the Government. The Working Group encourages Ghana to consider joining the Voluntary Principles on Security and Human Rights.
The Government should also ensure that it invests sufficient resources to adequately oversee the legal small-scale mining sector, including with regards to environmental, labour, land rights and the rights of children and of women. To prevent negative impacts, the Government would do well to provide legal small-scale mining activities with support and capacity building in health and safety, environmental and labour norms, and other technical expertise. In this context, we also note the initiative by the Chamber of Mines to recognise those small-scale mining operations that are operating responsibly, and encourage further private sector initiatives in cooperation with the authorities, to help address this significant national challenge.

Finally, the Working Group notes that the concentration of the economy in certain commodities and in the extractives sector means that the economy is highly exposed to any possible downturn in commodity prices or the exhaustion of deposits. The Working Group therefore encourages Ghana, and the mining and oil sectors, to ensure that adequate long term planning, saving for the decommissioning and clean-up of extractive sites take place. In addition, Ghana should invest in the diversification of sources of livelihoods to reduce and mitigate the potential impacts on human rights of downturns in prices or exhaustion of resources.

**Access to effective remedy**

While the Ghanaian constitution and legal framework is relatively strong in terms of protecting rights, the Working Group received information of multiple obstacles to access to remedy when violations of these rights occur.

The Working Group notes that the Government of Ghana has, in its response to the report of the Constitution Review Commission, committed to increasing legal aid, particularly for those persons that face monetary and other obstacles to access justice. This should also benefit access to judicial remedy for those persons whose rights have been violated as a result of business activity. The Working Group also urges the Government to ensure that local courts receive sufficient training and resources to equip them to adequately deal with complaints relating to human rights impacts from business activities.

The Working Group was encouraged to learn that the Commission on Human Rights and Administrative Justice (CHRAJ) – Ghana’s national human rights institution – has developed considerable expertise on business and human rights, and provides assistance in obtaining remedy for people adversely impacted by business activities through mediation-based processes. In addition, the mandate of CHRAJ to carry out independent investigations and make decisions on cases are important additional tools to achieve remedy as well as incentives for companies to engage in mediation. CHRAJ can play an important role in providing feedback and ensuring that Government and companies learn from incidents, address root causes of violations, and modify policies and practices to prevent further harm. However, CHRAJ lacks adequate resources to be able to take all relevant cases to court for judicial enforcement of its findings, and to conduct outreach with relevant stakeholders.
Progress but need to achieve scale in addressing child labour in cocoa and fishing sectors

Ghana’s economy is still highly reliant on small-scale operations in agriculture, especially cocoa exports, and on fishing. In the cocoa sector, family owned operations predominate. The informal nature of such operations can be a challenge in effectively addressing human rights impacts, including with respect to child labour, yet it is critical that government-initiated efforts reach sufficient scale.

The Working Group received harrowing information on children as young as six years old being engaged in hazardous labour in the fishing industry, including untangling underwater fishing nets at risk to their lives. Moreover, some children in fishing and other industries have been victims of trafficking, an additional grave violation of their rights, and rendering them especially vulnerable to abuses. These practices must be urgently addressed. The Working Group also received information of children engaged in worst forms of child labour on cocoa farms, including being exposed to harmful chemicals, carrying very heavy loads, and operating dangerous tools. Over half of the 500,000 children found in the cocoa industry reportedly have injuries from using such tools. Traditions of passing on knowledge and skills from parents to children are an important part of the society, but parents need to know how to recognize harmful activities when they take place.

The Working Group visited cocoa communities and supporting non-governmental organizations participating in multi-stakeholder initiatives to address child labour. Several good practices were noted, including holistic community action plans that included child protection, community self-monitoring through Child Protection Committees, and technical assistance to communities to increase cocoa yields and diversify their sources of income, for example through support for alternative livelihoods from sustainable palm oil extraction. Such efforts appeared to have achieved significant results in reducing the worst forms of child labour in the target communities, as well as increasing children’s school attendance. In these communities, the chiefs played an important role in promoting a protective environment for the rights of children and encouraging the mobilisation of women and children to address child labour.

Efforts to reduce child labour in the cocoa sector now need scaling up. There are close to 800,000 farmers in Ghana and current initiatives cover only a fraction of these. The national Government, district and municipal authorities, international brands, cocoa buyers, and the international community must close the gap. The Working Group notes that the Government of Ghana is working systematically to address child labour in cocoa, fishing and other sectors, including through the National Plan of Action for the Elimination of the Worst Forms of Child Labour, and with support from ILO and the IOM. These efforts must reach all districts and all communities. International buyers and brands can also increase their efforts, for example through strengthened certification targets. Community transformation methodologies in the cocoa industry, especially dialogue based approaches to allow adults and children to become aware of their obligations and rights, can inform existing efforts and initiatives in other sectors, for example in the fishing industry.

Addressing the harm from e-waste recycling
The Working Group has received information on the harmful effects of the large-scale recycling of electronic waste taking place in the Agbogbloshie area. The area, populated mainly by the poorest in society and economic migrants from the North and other areas, has become heavily contaminated from burning and disposal of toxic waste, with harmful effects on the health of the communities. The Working Group notes that much of this activity takes place illegally or in a grey zone, but that residents without other economic options are heavily dependent on the trade. The e-waste emanating largely from other countries in the Americas, Europe and Asia, often enters the country marked as second-hand goods for resale. The Working Group has received information that shipments received by local traders often contain broken or obsolete electronics together with working goods for resale, and that some foreign traders label broken goods as second hand on purpose in order to avoid high recycling costs in their home markets. In this context, the home countries of electronics recyclers have an important role to play in ensuring that standards are effectively enforced, and in setting out clearly the expectation that companies in their markets respect human rights throughout their global activities. The government of Ghana should also ensure that this sector is adequately regulated locally. At the same time, there is a need to ensure that local communities that depend on recycling electronics for survival receive sufficient support and alternative means of livelihood to discontinue this harmful trade.

**Ensuring respect for labour rights across all business sectors**

While we have examined the specific impacts of business activities on human rights in higher profile sectors such as mining, oil, cocoa and fishing, other sectors such as banking and telecommunications as well as retail, services and manufacturing in both the formal and informal segments of the economy may be exposed to human rights risks as well.

The Working Group received information with regards to both local and foreign companies not respecting relevant labour laws in factories, including with respect to contracts, health and safety measures and discrimination based on gender or ethnic origin. The Working Group has also received information that some companies—including in the telecommunications, manufacturing, and road construction sectors—are employing measures to discourage workers from forming legitimate trade unions and bargaining collectively. In this context, and in addition to strengthening the application of relevant labour laws and ILO standards and recommendations to Ghana, the Working Group notes that Ghana has a tradition of tripartite dialogue and cooperation that should be strengthened in the current context, to ensure that rights are respected across sectors.

Addressing labour conditions and other impacts on human rights in the informal sector is a challenge, though the Working Group was pleased to see efforts by the Ghana Trades Union Congress to work with informal sector associations to address challenges with regards to labour conditions, health and safety, and other labour concerns in several sectors of the informal economy.

**Closing**

The Working Group has ended its visit to Ghana, but we will continue to collect information over the coming months while writing our report. We welcome any additional information or suggestions that stakeholders would wish to share with us in this regard.
The report on the visit will be presented to the Human Rights Council in June 2014, and will contain concrete recommendations for the Government and business enterprises, as well as other stakeholders, that we hope will be useful to all to better address impacts of business activities on human rights in Ghana.

The Working Group will also hold a regional forum on Business and Human Rights in Africa in the second quarter of 2014. We sincerely hope that stakeholders from Ghana will be able to attend the regional Forum and share their good practices, experiences and challenges.