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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[5 June 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Business and human rights: The HRC Working Group must effectively address key challenges around corporate accountability

Amnesty International has engaged closely with business and human rights processes at the United Nations over many years, including with the current work of the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises (the Working Group). The organisation appreciates the opportunities that have been offered to provide feedback and suggestions to the Working Group.¹

The Working Group's mandate gives it scope to tackle some of the major business and human rights challenges caused by “governance gaps created by globalization”.² Amnesty International is concerned that the Working Group's strategy, outlined in its 2012 report to the Human Rights Council,³ has significant gaps that must be addressed with a view to addressing key challenges.

In this statement Amnesty International offers some observations about the Working Group's strategy and planned areas of focus. The organisation makes recommendations to address some of the gaps.

Scope of the Working Group's mandate

The Human Rights Council mandated the Working Group to *assess* the implementation of the *Guiding Principles on Business and Human Rights*.⁴ The Working Group's strategy focuses on promoting implementation, but without reflecting this vital assessment function. The effectiveness of the Guiding Principles and the UN “Protect, Respect and Remedy” Framework need to be tested in practice. They need to be further developed or strengthened where effectiveness is lacking.

The Working Group cites the sharing of good practices as one of the principal ways it will promote implementation of the Guiding Principles. However, it will be impossible to effectively promote or assess implementation based on examples of good practice alone – lessons must also be learnt through an examination of actual cases of corporate abuse.

The Working Group's emphasis on the need to build the “business case” for implementation of the Guiding Principles for both States and companies is also a serious concern. Under international law, States are obligated to protect against corporate abuse. Companies have a responsibility to respect human rights; while incentives are important, the duty to discharge that responsibility stands by itself and is not contingent on a business case.

Working Group's areas of focus

In its December 2011 submission to the Working Group, Amnesty International recommended five key thematic areas of focus for the Working Group.⁵ The organisation regrets that they are not better reflected in the Working Group's strategy.

Access to remedy

The Working Group's “Strategic considerations” describes steps that can be taken to improve access to justice for victims of business-related human rights abuses.⁶ Amnesty International welcomes this commitment, but it is not clear from the activities under the Working Group's planned work streams how it will be taken forward. Amnesty International would welcome greater clarity about this.

In order to ensure that the human right to an effective remedy is effectively realised in cases of corporate abuse, the Working Group's main focus must be on improving access to State-based judicial and non-judicial remedies, in particular in the home States where corporate actors are domiciled, have their central administration or principal place of business.

State regulation of corporate actors

The on-going failure by States to hold corporate actors accountable for human rights abuses represents a key gap in protection. For example, recent evidence by the United Nations Environment Programme and Amnesty International's own research have demonstrated Shell's on-going failure to properly remedy and prevent oil pollution in Nigeria.⁷ Despite the severe impact of its activities on the rights of the inhabitants of local communities, and the failure to conduct adequate human rights due diligence, Shell has never been properly held to account in Nigeria or by its home country governments.

To effectively address the accountability gap, States must adopt and enforce regulatory measures that apply to companies that operate domestically and abroad, either directly or through subsidiaries or business partners. There is an additional urgent need to address the legal enforcement gap that exists in holding companies to account for illegal conduct under existing laws.

As the Working Group states in its report, "adequate accountability of companies for involvement in human rights harm...is an integral part of the State's duty to protect".⁸ However, the Working Group fails to describe its strategy for addressing these vital "governance gaps". The Working Group should examine and draw lessons from actual cases of corporate abuse, like those researched by Amnesty International.

Protecting the rights of specific groups

Amnesty International welcomes that protecting the rights of specific groups is explicitly reflected in the Working Group's strategy. A detailed plan is now required for how it will address serious impacts of businesses on the rights of groups such as women, children, human rights defenders and Indigenous Peoples, which the Working Group itself has identified as a particularly vulnerable group.

Some of Amnesty International's research illustrates why attention is required to particular groups. That research has demonstrated that corporate abuses and a lack of effective remedy for victims often have a disproportionate impact on women. Differentiated impacts suffered by women as a result of the disaster in Bhopal, India include immediate health impacts such as gynaecological disorders and miscarriages, and a long-term increase in still-births among women living in the Bhopal area.⁹

Further enhancement of standards

The Human Rights Council and the former UN Special Representative on business and human rights have both recognised that existing standards should be built upon in future.¹⁰ The Working Group acknowledges that the further enhancement of standards should not be curtailed,¹¹ but does not commit to proactively take enhancement of the Guiding Principles forward. The Working Group must aim to make progress on this issue over the course of its three-year mandate, and it should therefore be reflected in its strategy.

Amnesty International welcomes the Working Group's focus on embedding existing standards into global governance frameworks, but does not share the Working Group's assessment that processes such as the revision of the International Finance Corporation (IFC) Sustainability Framework represent success. Much more remains to be done to ensure that the Sustainability Framework is fully aligned with the Guiding Principles and international human rights standards.¹² The Guiding Principles should be used as the minimum baseline for all future work on governance frameworks.

Recommendations

Based on these concerns, Amnesty International makes the following recommendations:

- The Working Group's strategy should fully reflect its vital function to assess the implementation of existing standards, as outlined in its mandate.
- The Working Group must examine and learn from real-life cases of corporate abuse.
- The Working Group should consider States' extraterritorial obligations in relation to business related human rights abuses the further enhancement of standards, and other vital issues absent from its strategy.
- The Working Group should provide further details regarding how it will promote improved access to remedy for victims of corporate abuse and other objectives that it has set for itself.

- ¹ Amnesty International, Letter to the Working Group on Human Rights and Transnational Corporations and Other Business Enterprises, 8 December 2011 (Index: IOR 40/016/2011). See: <http://www.amnesty.org/en/library/info/IO40/016/2011/en> (Letter to the Working Group).
- ² Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, 7 April 2008, A/HRC/8/5, para 3. The need for further efforts to bridge governance gaps was confirmed by the Human Rights Council (A/HRC/RES/17/4, preamble). In its April 2012 report to the Human Rights Council, the Working Group affirms that "Governance gaps lie at the core of the human rights and business challenge." (A/HRC/20/29, 10 April 2012, paragraph 20).
- ³ A/HRC/20/29.
- ⁴ A/HRC/RES/17/4, operative paragraph 6 (b).
- ⁵ Letter to the Working Group. The five key thematic areas are: Improved access to justice for victims of corporate abuse, particularly with respect to judicial and state based mechanisms in Home States; Need for greater State regulation of corporate actors, particularly with respect to operations conducted abroad; More effective enforcement of existing laws holding corporate actors to account for human rights abuses; Enhanced attention to protecting the rights of specific groups, particularly women, children, Indigenous Peoples and human rights defenders; and Enhancement of standards on business and human rights.
- ⁶ A/HRC/20/29, paragraph 56. The steps outlined by the Working Group are as follows: "identifying opportunities to dismantle barriers to justice for victims of business-related human rights harm; identifying success factors in establishing effective judicial as well as non-judicial grievance mechanisms; discussing the consequences for States and businesses that fail to implement the Guiding Principles; and paying particular attention to rights-holders that may be particularly vulnerable to harm, or that may bear the brunt of adverse impact."
- ⁷ UNEP, Environmental Assessment of Ogoniland, August 2011; Amnesty International and the Center for Environment, Human Rights and Development (CEHRD), Nigeria: The true 'tragedy': Delays and failures in tackling oil spills in the Niger Delta, November 2011 (Index: AFR 44/018/2011).
- ⁸ A/HRC/20/29, paragraph 56.
- ⁹ Amnesty International, India: Clouds of Injustice: Bhopal disaster 20 years on, November 2004 (Index: ASA 20/015/2004).
- ¹⁰ A/HRC/RES/17/4, operative paragraph 4; UN Special Representative on business & human rights, Recommendations on follow-up to the mandate, 11 February 2011.
- ¹¹ A/HRC/20/29, paragraph 50.
- ¹² Amnesty International, The Revised Sustainability Framework of the International Finance Corporation: a missed opportunity to better protect the rights of those affected by business related human rights abuses, October 2011 (Index: IOR 80/006/2011).