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Joint written statement* submitted by Amnesty International, the Human Rights Watch (HRW), the International Commission of Jurists (ICJ), non-governmental organizations 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.

[29 August 2011]

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

Selection and appointment of the members of the UN working group on human rights and transnational corporations and other business enterprises: A checklist**

In September 2011 at the 18th session of the United Nations Human Rights Council (HRC), the HRC President is to appoint five independent human rights experts to serve as the newly established Working Group on the issue of human rights and transnational corporations and other business enterprises¹.

The HRC intends the process of selection to ensure that eligible candidates are highly qualified individuals who possess established competence, relevant expertise and extensive professional experience in the field of human rights². The process is subject to the general criteria and technical and objective requirements set out in HRC resolution 5/1 and decision 6/102, respectively.

Amnesty International, Human Rights Watch (HRW), the International Commission of Jurists (ICJ), and Rights & Accountability in Development (RAID) have developed the following checklist as an interpretative aid for applying the criteria and requirements set out in these Human Rights Council resolutions. Five headings are listed below; of these headings, title one (1) is taken from resolution 5/1 (general criteria) and titles two (2) to five (5) match the four technical and objective requirements adopted with decision 6/102.

The NGOs proposing these criteria consider commitment to universal human rights, relevant experience, competence, independence and personal integrity to be obligatory requirements for any individual to become an eligible candidate for this mandate. While it is not necessary for each Working Group member to meet every specification listed below, the strongest candidates should meet a substantial number of them.

Checklist

1. Independence; impartiality; personal integrity and objectivity³.

- A demonstrated commitment to upholding the highest standards of human rights; understanding the impact and influence that businesses have on the enjoyment of human rights; and further enhancing standards and practices with regards to business and human rights;
- A firm commitment to uphold the integrity, independence and impartiality of the Working Group's mandate;

Candidates should disclose any past or present links with governments, businesses, industry bodies and civil society organizations.

** Rights & Accountability in Development (RAID), an NGO without consultative status, also shares the views expressed in this statement.

¹ The Working Group was established by HRC resolution 17/4 (June 2011).

² Resolution 5/1 paragraph 41

³ Resolution 5/1, paragraph 39.

2. Qualifications: Relevant educational qualifications or equivalent professional experience in the field of human rights; good communication skills in one of the official languages of the United Nations.

- An advanced university degree or combination of academic qualifications and relevant experience directly related to the mandate;
- Excellent communication skills in at least one and preferably more of the UN working languages (English, French and Spanish);
- Extensive experience in communicating with international institutions, governments, civil society, businesses, the media and other relevant stakeholders, including in particular with individuals and communities affected by business-related abuses, and in dealing with senior government officials and senior business managers in connection with human rights issues.

3. Relevant expertise: Knowledge of international human rights instruments, norms and principles; as well as knowledge of institutional mandates related to the United Nations or other international or regional organizations' work in the area of human rights; proven work experience in the field of human rights.

- Extensive knowledge of international human rights law and standards and relevant international regulatory regimes; in this regard, the HRC should give attention to ensuring that the Working Group appointees reflect an appropriate representation of different legal systems and traditions and have collectively a demonstrated knowledge of all relevant areas of international law, including their interplay with regional and national legal systems;
- Expert knowledge of business and human rights issues, including strong familiarity with concrete situations of alleged abuses involving businesses as well as conceptual frameworks such as the UN “Protect, Respect and Remedy” Framework, guidance such as the Guiding Principles on business and human rights and prevailing best practices;
- At least five years of progressively responsible work experience in a field related to the mandate, in particular in protecting individuals and communities at risk of human rights abuses;
- Demonstrated knowledge of regional and national legal frameworks and jurisprudence relevant to business and human rights issues; knowledge of government institutions, legislation, policies and regulations relevant to the states' duty to protect against business-related human rights abuses;
- Demonstrated knowledge of business activities and their interplay with human rights; including knowledge relating to human rights due diligence policies and practices and the ability to make recommendations thereon;
- Demonstrated knowledge of state-based judicial and non-judicial mechanisms, such as National Human Rights Institutions, as well as supra-national mechanisms, such as the OECD National Contact Points, and of options for overcoming their limitations, relevant to the pursuit of remedies for persons affected by business-related human rights abuses;
- Demonstrated knowledge relating to weaknesses and gaps in the legal protection of human rights in the context of business, including but not limited to gross human rights abuses;
- Awareness of the strengths and weaknesses of multi-stakeholder initiatives such as the Extractive Industries Transparency Initiative and the Kimberley Process;

- Demonstrated knowledge of investment institutions that provide support to businesses, such as the European Investment Bank, the World Bank, the International Finance Corporation, export credit agencies, private banks and pension funds;
- Demonstrated knowledge of institutional mandates of the United Nations or other international or regional organisations relevant to the mandate.

4. Established competence: Nationally, regionally or internationally recognised competence related to human rights.

- Experience in critically analysing information and data relating to actual cases and practices, identifying lessons learned, and making effective recommendations for the implementation in practice of human rights obligations and standards;
- The ability to conduct research required in carrying out fact-finding missions; experience in conducting investigations into specific cases of business-related human rights abuses and in interacting with individuals and communities;
- Awareness of and sensitivity to the particular vulnerabilities of specific groups who face a heightened risk of human rights abuses as a result of business activities (for example indigenous peoples; women; minorities; children; migrant workers; trade unionists; human rights defenders; persons with disabilities);
- Experience and commitment to working closely with a broad range of non-governmental stakeholders, including NGOs, National Human Rights Institutions and business associations;
- Experience in handling cases of business-related human rights abuse before judicial and quasi-judicial bodies would be an asset.

5. Flexibility/readiness and availability of time to perform effectively the functions of the mandate and to respond to its requirements, including attending Human Rights Council sessions.

- Willingness and ability to devote a substantial proportion of working hours to fulfilling the mandate, which includes attending sessions of the working group (two sessions per year); undertaking two to three country missions per year, preparing reports to the HRC and the General Assembly (including annual and country mission reports); and guiding the work of and participating in the newly established Forum on business and human rights⁴;
- Willingness and ability to act urgently when cases or situations so require.

Background

HRC resolution 5/1 sets general criteria that are of ‘paramount importance while nominating, selecting and appointing mandate-holders: (a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity’ (paragraph 39).

HRC decision 6/102 establishes four technical and objective requirements (qualifications, relevant expertise, established competence and flexibility/readiness and availability of time) to be considered in the selection of Special Procedures mandate-holders.

⁴ The Forum was also established by HRC resolution 17/4.

HRC resolution 5/1 excludes as potential mandate-holders individuals holding decision-making positions in Government or in any other organization or entity which may give rise to a conflict of interest with the responsibilities inherent to the mandate (paragraph 46).

HRC resolution 5/1 requires that due consideration be given to gender balance and equitable geographic representation, as well as to an appropriate representation of different legal systems (paragraph 40).
