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UNITED NATIONS: A CALL FOR ACTION TO BETTER PROTECT THE RIGHTS OF THOSE AFFECTED BY BUSINESS-RELATED HUMAN RIGHTS ABUSES

Amnesty International urges UN member states to call for and support a Special Procedure with a full mandate on business and human rights at the current session of the UN Human Rights Council, which will conclude at the end of this week (17 June). A strong Special Procedure is critical to take forward and build on both the UN “Protect, Respect and Remedy” Framework and Guiding Principles¹ developed by the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, Professor John Ruggie (the SRSG or Professor Ruggie), and continue to address concerns relating to business and human rights not adequately covered by the Guiding Principles.

A draft resolution² (‘draft resolution L.17’), which has been presented to the Council session by Norway, jointly with Argentina, India, Nigeria, and Russia, envisages a Working Group assisted by an annual consultative Forum as the Special Procedure that will follow-up the mandate of the SRSG.

Amnesty International remains concerned that the draft resolution continues to fall short of capturing essential functions required to advance the rights of those affected by business-related human rights abuses, despite the few changes that have been made to the original draft. Draft resolution L.17 focuses almost exclusively on dissemination and implementation of the Guiding Principles, good practices and lessons learned. Additional core elements are essential for the Working Group’s mandate which should reflect the need to build on the Guiding Principles in order to effectively move forward. Without providing the missing elements, the effectiveness of the resolution and ultimately the Working Group will be weak.

In the negotiations to date, too many states have been unduly deferential to what they portray to be the concerns of businesses and insufficiently attentive to the need to ‘road-test’ and build on the Framework and the Guiding Principles. As the negotiations draw to a close, Amnesty International urges UN member states to actively continue to negotiate draft resolution L.17 and include the following essential elements in order to ensure the establishment of an effective follow-up Special Procedure.

1 UN Index: A/HRC/17/31

2 UN Index: A/HRC/17/L.17

1) The resolution must expressly integrate throughout its text the 2008 UN “Protect, Respect and Remedy” Framework as the reference point for moving forward; this is especially important in the operative paragraphs that constitute the mandate of the Working Group³.

In operative paragraph 3, the SRSG is commended for developing and raising awareness on the Framework based on three overarching principles for business and human rights. Operative paragraph 4 recognizes the role of the Guiding Principles in providing recommendations regarding the Framework’s implementation. In his presentation to the UN Human Rights Council on 30 May 2011, Professor Ruggie himself described the Framework as addressing the “what” question *i.e.* what States and business need to do to ensure business respect to human rights, and the Guiding Principles as addressing the “how” question *i.e.* moving from concept into practice. Yet, despite this clarification regarding the relationship between the two, the Framework is hardly mentioned in the subsequent operative paragraphs of the draft resolution.

As a result, the current draft resolution, which will define the UN’s future work on business and human rights, lends itself to an overly narrow interpretation. The “what” and “how” clearly need to go hand-in-hand; this requires that both the Framework *and* the Guiding Principles be explicitly referenced together throughout the draft resolution’s provisions in order to adequately reflect the established business and human rights framework.

2) The resolution must expressly spell out the ability of the Working Group to examine and evaluate the implementation and effectiveness of the Framework and the Guiding Principles in practice, with reference to prevailing international human rights standards, as well as the ability to issue recommendations for addressing protection gaps relating to business-related human rights abuses.

The effectiveness of the Framework and the Guiding Principles needs to be tested in practice. The Working Group must be given a clear mandate that puts at its disposal a wide range of tools and gives it the latitude to use the most appropriate ones to test and assess such effectiveness in particular circumstances. The current reference to assessing good practices and lessons learned in operative paragraph 6(b), while a welcome inclusion, misses the point. Despite the progress made, some significant issues, such as extraterritoriality and corporate accountability, have not been adequately addressed in the Guiding Principles and will require the attention of the Working Group to adequately advance the rights of those affected by business-related human rights abuses⁴.

Amnesty International is not calling for a re-opening of the Guiding Principles, but for the UN and others to build on them in a meaningful way based on experience with real life situations.

3) The resolution must expressly establish the ability of the Working Group to seek, receive and exchange information from all relevant stakeholders on all issues and alleged abuses falling within the Working Group’s mandate.

³ Operative paragraphs 6(b) and 6(c). The UN Framework should also be referenced in operative paragraph 12, which requires the UN Secretary-General to report on how the UN system as a whole can contribute to the advancement of the business and human rights agenda.

⁴ Main areas in which Amnesty International believes the Guiding Principles remain insufficient include:

(1) **Extraterritoriality:** The Guiding Principles do not require States to put in place effective regulatory measures to prevent and punish their companies from abusing the rights of individuals and communities in other countries; (2) **Due diligence:** The Guiding Principles do not specify that States should require companies to undertake human rights due diligence - essential for prevention, accountability and remedy; and (3) **Right to remedy as a human right:** The Guiding Principles fail to explicitly recognize the right to remedy as a human right.

Amnesty International provided detailed comments on an outline of the Guiding Principles in October 2010, and considers that many of these comments continue to be valid in respect of the final Guiding Principles. The comments are available at: <http://www.amnesty.org/en/library/info/IOR50/001/2010/en>.

In line with existing UN Special Procedure mandates, in addition to country-visits, which are already envisaged in the draft resolution, the Working Group should have an express remit to exchange any information relevant to its mandate, such as on actual situations and emblematic specific incidents. It should be able to make recommendations to relevant stakeholders based on a reference to the Framework, the Guiding Principles, and other international human rights standards. The mandate of seeking and receiving information from relevant sources would be better placed as a stand-alone paragraph before operative paragraph 6 (b), which is mainly about good practices and lessons learned. As a stand alone function it would be more useful and apply to other operative paragraphs (such as 6 (e), on options for access to effective remedies, and 6 (f) on integration of a gender perspective). By doing so, it would help ensure that the mandate remains grounded in real life situations. An overall function of seeking, receiving and exchanging information on specific allegations of human rights abuses would not amount to establishing a ‘complaints mechanism’ or an ‘adjudication procedure’⁵ as suggested by some.

4) The resolution must establish a process for analyzing gaps in the legal protection of business-related human rights abuses, with a view to a long-term development of an international legal instrument.

While operative paragraph 4 recognizes the need for other long-term developments, including “further enhancement of standards”, the Working Group is not mandated to take proactive steps to tackle the need for greater clarity and increased legal protections. If not corrected, this will be a missed opportunity. Moving forward with these issues could be effectively achieved with amendments to operative paragraph 6(e), which provides for the continued exploration of options and recommendations.

Professor Ruggie has recognized that supplementary measures such as a multilateral legal instrument on business and human rights may be required to provide greater clarity and increase legal protections. With a view to contributing to the groundwork that would be necessary for the eventual development of such an instrument, the Working Group should be mandated to analyze the options for addressing weaknesses and gaps in the legal protection of human rights including, but not limited to, those related to gross human rights abuses, and make recommendations for action.

All the functions outlined are the necessary means of examining the operation of the Framework and the Guiding Principles in practice and for ensuring that those who are victims of business-related human rights abuses are heard in the ongoing UN process.

Background

In 2005, UN Secretary-General Kofi Annan appointed Professor John Ruggie as the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises (SRSG), following a request by the UN Commission on Human Rights⁶.

In June 2008 the SRSG proposed a policy framework on business and human rights to the UN Human Rights Council. The “Protect, Respect and Remedy” Framework rests on three principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and greater access by victims to effective remedy.

⁵ Existing UN Special Procedures have responded to specific allegations of business-related human rights abuses by sending communications to the companies and governments involved, conducting country visits to examine the allegations, and issuing recommendations to the relevant stakeholders.

⁶ Resolution 2005/69

The Council unanimously welcomed the identification of the Framework, and extended the SRSG's mandate until 2011 with the task of providing guidance on operationalizing the Framework⁷.

In May 2011 the SRSG concluded his second mandate and presented to the UN Human Rights Council "Guiding Principles for the Implementation of the United Nations 'Protect, Respect and Remedy' Framework".

During the current session of the UN Human Rights Council (30 May to 17 June), UN member states are negotiating a draft resolution to establish a follow-up Special Procedure mandate to that of the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises (the SRSG), Professor Ruggie. The draft resolution, which has been presented by Norway, jointly with Argentina, India, Nigeria, and Russia, envisages as the follow-up Special Procedure a Working Group assisted by an annual consultative Forum.

⁷ Resolution 8/7