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UN Human Rights Council must act now to salvage the business and human rights agenda

Amnesty International urges the UN Human Rights Council to send a clear message at its 26th session that substantial action is urgently required to implement and build on existing international standards on business and human rights; this includes through the use of binding legal measures at the national level that regulate corporate conduct and remedy human rights abuses.

The Core Group (consisting of Norway, Argentina, Ghana, India and Russia) should put forward, and the Human Rights Council adopt, a strong resolution that addresses States' lethargy in implementing the UN Guiding Principles on business and human rights and which encourages them to undertake national legal reforms in relation to business and human rights.

Since the Council's unanimous endorsement of the Guiding Principles in June 2011,¹ there has been a conspicuous failure by most States to take the tangible steps necessary for their effective implementation. Amnesty International shares the feelings of frustration expressed by many NGOs that underlies the call by some for an inter-governmental UN business and human rights treaty-making process to begin immediately.

The Guiding Principles, designed to operationalise the UN "Protect, Respect and Remedy Framework,"² were intended to serve as a floor for action – reflecting minimum state obligations and corporate responsibilities for human rights abuses, and establishing principles relating to the human right to a remedy for corporate abuses. It was clear from the outset that the Guiding Principles alone would not be enough; they must be complemented by effective national regulatory measures, including with extra-territorial effect, to address the continuing human rights protection gaps.

While many States home to multinational companies have committed to the Guiding Principles on paper, their actions in practice are not in line with – and in some cases openly contradict – them.³ Even when businesses engage in criminal conduct that either is or leads to serious human rights abuses, States rarely take action to hold them legally to account.⁴ The Human Rights Council must make clear that it expects States to act in enforcing the law.

Additionally, the resolution must be designed to re-invigorate the Council's and the Working Group's⁵ attention to the issues central to progress in the implementation and further elaboration of the Guiding Principles. The areas that must be prioritised for action include: corporate legal accountability for human rights abuses committed abroad (*i.e.* outside the company's home state borders); access to state-based remedies by individuals and communities affected by corporate human rights abuses; legal protections for vulnerable groups; and, the mandatory transparency and reporting of information relevant to corporate human rights risk and impact assessment.

The resolution must also ensure that the Working Group has the means to critically assess state action (or inaction) in relation to relevant international law and standards, including the Guiding Principles. The Working Group must be encouraged to examine specific real-life situations and identify gaps in existing standards with a view to generating recommendations, including targeted legal measures. Within the next three years, the Working Group should make actionable proposals to the Human Rights Council to address prevailing human rights protection gaps.

The Council should also initiate open, transparent and productive discussions to build international consensus on strengthening current international law and standards on business and human rights. The resolution should mandate a new independent expert to develop a detailed proposal for progress on this area. Such a proposal should be based on thorough analysis and groundwork, including as to the value of an international instrument, the priority areas that it might address, and the strategy for building consensus around adoption of the proposal. Amnesty International reaffirms its call on the UN to build on and elaborate existing standards on business and human rights – which could ultimately require a new international legal instrument.

The Council should ensure that the annual forum on business and human rights is used more strategically. In 2012, we made recommendations that it be used as an opportunity for generating proposals based on real-life cases that would then be used to inform the work of the Working Group, particularly in relation to the human right to remedy. Currently, this fails to be the case.⁶

Amnesty International will be following the discussions at the 26th session and looks forward to the adoption of a resolution that meets the objectives described above.

¹ UN Doc A/HRC/17/31, available at http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf

² UN Doc. A/HRC/8/5, available at: <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>

³ Amnesty International's assessment of the disappointing efforts by States on business and human rights stems from the direct advocacy, research and campaigning in which we have been actively engaged over the past three years. For example, see: Amnesty International, *Injustice Incorporated: Corporate Abuse and the Human Right to Remedy*, March 2014 (Index: POL 30/001/2014), which documents four case studies where individuals and communities have been unable to access a legal remedy in courts, despite 30 years of trying in the instance of Bhopal; Amnesty International and Greenpeace, *The Toxic Truth: About a Company Called Trafigura, A Ship Called the Probo Koala, And the Dumping of Toxic Waste in Cote D'Ivoire*, September 2012 (*The Toxic Truth*). In that report we made numerous findings and recommendations concerning the failure of various States to hold Trafigura to account for its role in the dumping of toxic waste that harmed thousands of persons in Côte d'Ivoire. One of the recommendations called on UK state authorities to investigate options for initiating a criminal prosecution against Trafigura and/or individuals involved in decision-making or supervisory positions, who may have been involved in the commission of illegal acts. Until today and despite the evidence reviewed by Amnesty International, UK authorities have taken no legal action against the UK-company or any such individuals. A voluntary proposal issued by the EU Commission on conflict mineral supply chains (March 2014) falls well below the normative international standard established by the Guiding Principles and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Due Diligence Guidance) by allowing companies to treat due diligence as optional. See also the letter by Professor John Ruggie to the EU Commission at: <http://www.shiftproject.org/news/john-ruggie-submits-letter-european-commission-conflict-minerals-reporting>.

⁴ See *The Toxic Truth* above. Available at www.amnesty.org/en/library/info/AFR31/008/2012/en

⁵ Working Group on the issue of human rights and transnational corporations and other business enterprises.

⁶ Amnesty International, Oral intervention at open consultation with stakeholders regarding the first annual Forum on Business and Human Rights, 10 May 2012, available at <http://www.business-humanrights.org/UNWorkingGroupPortal/Submissionsinterventions/Sessions/SecondSession>