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

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Excellency,

I am writing to resign from my position on the UN Working Group on Human Rights and Business. It has been an honour to be part of progressing this critical global agenda for the past five years. I would like to use the opportunity to reflect on the UN's role and activities for advancing human rights in the context of business, and to offer a few suggestions in this respect.

First, I want to make the reason for my resignation very clear. It is in no way a commentary on the activities, mandate or makeup of the Working Group, nor with the way the UN carries out its mission to prevent negative human rights impacts by businesses. I am leaving the Working Group because my experience and expertise lie in assisting companies to address this challenge directly. I have taken a position at Business for Social Responsibility that allows me to continue the battle for human rights on a different front. I hope to continue to contribute to this field from my new position.

Second, I want to reiterate the critical mission of the UN in addressing the challenge of business-related human rights harms. As the world becomes increasingly interconnected, the need for trusted international actors with the power to convene across political, cultural and stakeholder divides will grow exponentially. I believe the UN has served this important purpose by developing and adopting the UN Guiding Principles on Business and Human Rights, and that it needs broad and wide support as we meet the next challenge of implementing them. I also believe that we need to invite diverse stakeholder and national political perspectives, and find common ground about future international standards. This will not be possible without strong UN leadership.

Finally, I want to reflect on the accomplishments of the UN Working Group in the five years since the adoption of the Guiding Principles, as well as the key challenges and opportunities ahead.

The Working Group was appointed at a time of unprecedented consensus on addressing the immense human rights impacts of business operations. The unanimous adoption of the Guiding Principles and their broad support by companies, governments and civil society was, as the saying goes, 'the end of the beginning'. Since then, each actor has pursued the implementation of the Guiding Principles in their own way and at their own pace. There have been healthy differences and tensions regarding the rate of progress, how to scale these efforts and the effectiveness of various paths.

Throughout all this debate, the fundamental consensus around the Guiding Principles has held. Few, if any, actors argue against deeper and more urgent implementation. The UN Annual Forum on Business and Human Rights attracts over 2,000 participants each year; National Action Plans have emerged as a powerful implementation vehicle for States; and the flourishing of guidance documents, tools and research demonstrate that the Guiding Principles are here to stay, and will be the lodestar for business conduct now and in our future.

But alongside these accomplishments, unfinished work remains.

His Excellency Mr. Kyong-Lim Choi
President of Human Rights Council

The issue of measurement must be addressed. If we are serious about implementing the Guiding Principles, we need to know where progress is taking place and which issues and actors are lagging behind. Without robust measurement efforts, we will be subject to speculation, misinformation, and anecdotes posing as data. I realize that measuring the state duty to protect and the company responsibility to respect carries political risks and value judgements in the determination of what and how to measure. Yet with dozens of other challenging issues—from corruption to child labour to human trafficking—we have faced these obstacles. The first step toward solving a problem is understanding it. And every day we postpone measurement efforts, we fail to do both.

Official country missions are a key component of the UN's mandate. It is time to extend these missions to companies. The UN Working Group on Human Rights and Business has a unique mandate, extending to both businesses and governments. The Working Group's country missions have shed light on the ways governments are implementing their duty to protect human rights. We need a parallel system to shed light on the business responsibility to respect human rights. This responsibility has not traditionally been addressed by the international system, and gaps in knowledge among political leaders make it difficult to create the right context for sustainable business conduct. This process need not be an audit or a name-and-shame exercise, but rather an open and honest exchange in the UN Human Rights Council about the challenges and compromises businesses face and the steps they've taken to address them, informed by official company missions of the UN Working Group.

The UN must become more equipped to deal with business. The question of whether businesses are human rights actors is settled. From international institutions to remote rural villages, it is undeniable that companies have profound impacts—positive and negative—on workers, communities and the environment. In the past five years, the Working Group has fielded complaints from dozens of communities impacted by businesses. In our experience, companies were more responsive to our communications on these allegations than governments. Business is part of the international community in a way that would have been unthinkable to the founders of the human rights system in 1945. It is time for the UN to recognize this reality and address businesses directly. This includes incorporating private-sector impacts into the Universal Periodic Review process, and for treaty bodies like the Committee on the Elimination of Discrimination against Women to issue general comments that relate to the private sector's responsibilities for human rights, rather than solely addressing governments.

Excellency, I would like to draw your attention to the fact that I am currently the only woman in the UN Working Group and so my resignation will severely affect the already poor gender balance of the group's membership. I would therefore like to reiterate the recommendation, made by the Working Group in its letter of 25 January 2016 to the Consultative Committee, that priority be given to improving the gender balance in the process of appointing new Working Group members.

As I close, I would like to acknowledge the outstanding professionalism and commitment of my four colleagues in the UN Working Group and our Secretariat at OHCHR. I would also like to recognise the generosity of my home institute, the Danish Institute for Human Rights, which has supported my mandate. In the same vein, I want to recognise all the other organizations, especially NGOs, business and states, who have contributed essential engagement and support to the UN in carrying out our shared mission.

Sincerely yours,



Margaret Jungk

Former Member, Working Group on the issue of human rights and
transnational corporations and other business enterprises
[appointed HRC 18, September 2011]