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

REFERENCE: CM/CC/LW/MvG/ff

31 March 2012

**Subject: Public Consultation on the Independent Governance and Oversight Mechanism of the ICOC**

Distinguished members of the Temporary Steering Committee,

The Working Group on the issue of human rights and transnational corporations and other business enterprises (herein after the Working Group on Business and Human Rights) recognizes the efforts of the Government of Switzerland and other participants in the conception of an international code and a multi-stakeholder initiative on the issue of private security companies and other private security service providers.

Today, States, business enterprises (private and state-owned) and civil society count with a common platform on the issue of corporate human rights impacts. This authoritative focal point is the UN "Protect, Respect and Remedy" Framework and the Guiding Principles on business and human rights that operationalize such framework. The framework was accepted by the UN Human Rights Council in 2008 and the UN Guiding Principles were unanimously endorsed by the Council in 2011. That year the Office of the High Commissioner for Human Rights issued an Interpretative Guide with more extensive commentary on the Corporate Responsibility to Respect, the second pillar of the UN Guiding Principles. Since then, various organizations and standard setting bodies have aligned their rules and processes with the UN Guiding Principles or are seeking to do so, and various States have already kick-started consultations to design concrete regional and national plans to implement the UN Guiding Principles and to design industry-specific practical guidelines based on the UN Guiding Principles.

The general comment of the Working Group on Business and Human Rights is that Temporary Steering Committee for the ICOC and other participants of the multi-stakeholder initiative should also seek to make these rules and processes on private security consistent

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with the UN Guiding Principles. The advantages of convergence are clear. The ICOC and its Governance and Oversight Mechanism will not operate in a vacuum. They will interact with public domestic and international law, State policies and programs, other private and mixed regulation efforts (e.g. the Voluntary Principles on Security and Human Rights) and with a growing number of non-judicial and judicial grievance mechanisms available to affected individuals and communities –many of which have incorporated, as mentioned above, the UN Framework and Guiding Principles. To the extent that greater compatibility exists between all parties' approach to business and human rights impacts transactions costs will be lower.

More concretely, the Working Group would like to draw the Temporary Steering Committee's attention to the following elements of the UN Guiding Principles, which should inform the responsibilities and procedures of the Plenary, the Board and the Secretariat that constitute the Oversight Mechanism of the ICOC.

#### *The complementary of state duties and corporate responsibility*

The UN Guiding Principles, with its three pillars, one on State duties, one on corporate responsibilities and the other one on principles for access to remedy are "intended to be a dynamic system of preventative and remedial measures". While it is clear that the ICOC is a code for companies, the multi-stakeholder Oversight Mechanism and its Charter should explicitly declare that Montreux Document Participating States and Affiliated States are committed with all UN Guiding Principles. The Annual Plenary should provide room for States to communicate their progress on developing policies, programs or regulation ensure the appropriate accountability of private security companies domiciled in their territory or operating in their jurisdiction.

#### *Business partners and relationships with other parties*

In order to prevent and mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, business enterprises are expected to leverage appropriate behaviour by other parties. The UN Guiding Principles and the Interpretative Guide elaborate on how leverage may be exercised. Besides the specific accountability procedures set out by the Oversight Mechanism to deal with incidents and company non-compliance, Board affiliates and the Mechanism Secretariat should explicitly commit to exercising appropriate leverage to seek to ensure that the rights of affected individuals or communities are respected and that they find redress.

#### *Certification and Performance Assessment*

The credibility of multi-stakeholder initiatives increasingly rests on their ability to have effective and transparent accountability processes and on the ease of access that affected individuals and communities have to grievance mechanisms that function according to a rights-based approach. The Certification and Performance Assessment chapter of the ICO charter are thus crucial. The Temporary Steering Committee and the Oversight Mechanism that will soon be in place need to consider whether the procedures presented in the Charter are robust enough, whether they allow the Mechanism to exercise both prevention and mitigation roles and whether they are being carried out following a rights-based approach.



For example, the Human Rights Due Diligence guidelines of the UN Guiding Principles contain a series of steps and criteria that should be incorporated into the Certification and Performance Assessment procedures including those that are yet to be developed by the Board and the Secretariat. The UN Guiding Principles' section on Human Rights Due Diligence in the corporate pillar refer to the "effective integration" of human rights impact assessments into corporate decision-making. This should inform the certification process suggested in the Charter. Certifying whether company management systems and policies are aligned with the ICOC is an indispensable step within the broader intention of assessing whether a company is following the letter and spirit of the ICOC. But often certification and auditing practices fail to ascertain the degree to which certain principles and requirements are effectively integrated into the relevant decision-making levels inside a company and into all relevant functions. Any certification process that looks at management systems and policies should design criteria, questionnaires and process that can identify whether human rights impacts assessments and findings by operational-level grievance mechanisms are known by the appropriate levels inside the company and whether they are actually informing their actions with a view to respecting human rights and international humanitarian law.

In general, field investigations and verifications for the purposes of certification and monitoring, consultation and dialogue with local communities, independent third party field assessments and the involvement of credible international human rights and international humanitarian law experts should increase the legitimacy of the accountability processes proposed in the Charter.

#### *Grievance Mechanism*

The complaints management process of the Oversight Mechanism should follow the eight principles for grievance mechanism explained in the UN Guiding Principles: legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility, continuous learning and engagement in dialogue. Victims must have the opportunity to participate in the grievance mechanism and to be engaged through dialogue. The Mechanism should explicitly seek to exercise leverage over companies and other parties to ensure that affected individuals or communities find redress.

Yours sincerely,

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

*The Working Group was established by the United Nations Human Rights Council in June 2011. The five members are Mr. Michael Addo, Ms. Alexandra Guáqueta, Ms. Margaret Jungk (current Chairperson-Rapporteur), Mr. Puvan Selvanathan and Mr. Pavel Sulyandziga. They formally took up their role as of 1 November 2011. The Working Group is independent from any government or organization. It reports to the Human Rights Council and to the UN General Assembly. For more on the work of the Working Group on the issue of human rights and transnational corporations and other business enterprises, visit <http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>*