

**Statement delivered by South Africa**

**Open-ended intergovernmental working group on THE ELABORATION of an International Legally Binding Instrument on Transnational Corporations and other Business Enterprises with respect to human rights**

**PANEL IV**

**Open debate on different approaches and criteria for the future definition of the scope of the international legally binding instrument**

 ***Check against delivery***

 **27 OCTOBER 2016**

Chairperson,

The South African delegation has made numerous interventions in the past on the imperative need to elaborate a legally binding instrument aimed at regulating the activities of TNCs and Other Business Enterprises (OBEs) and to enforce upon them uniform standards and a universally regulatory framework.

The South African delegation reiterates its position that it would be a travesty of justice to equate locally registered business with the Other Business Enterprises who operate in many jurisdictions across the world. These OBEs with transnational character command resources and assets calculated in billions and trillions of dollars which local business do not have. Therefore, the sheer size calculated in terms of assets and resources do matter in this differentiation. We concur with the panellists in this regard that our concerns relate to situations where these entities are capable of evading their human rights’ responsibilities on jurisdictional grounds.

Notwithstanding this Moderator, the South African delegation has also been on record as acknowledging and recognizing that local business is not immune from human rights violations and in many cases with State complicity. The aim of the treaty, however, would be to resolve the above-mentioned challenges by filling the current protection gaps in international human rights and humanitarian law.

 In determining the scope of the proposed instrument, the following issues are pertinent and should not be overlooked:

* The phenomenon of globalization and its negative impact on the economies of developing countries precipitated by the character of the TNCs and OBEs;
* The key provisions of the Instrument should be predicated on the criminal liability of TNCs and Other Business Enterprises with transnational character;
* Criminal liability of States acquiescing in violations of human rights by TNCs and OBEs, including grave breaches of international human rights and humanitarian law;
* Peremptory principles of international law in regard to extra-territoriality must be strictly enforced. International law impose duties on States to cooperate in this regard;
* The general rules of international must be applicable in the Instrument;
* The instrument covers all human rights including the right to development, with respect to activities of Transnational Corporations and Other Business Enterprises

TNCs and OBEs are under obligation to observe the international human rights law principles of universality; indivisibility; participation; accountability; transparency; *equality*, *equity, and* non-discrimination

Finally Chairperson, South Africa believes that in considering elements of the envisaged treaty, we must create a legal mechanism to prosecute all allegations with a mandate and competencies to provide effective remedies as well as combatting impunity on the part of the TNCs and OBEs who commit these violations.

I thank you.