

Botswana Statement: 3rd Session of the Intergovernmental Working Group on TNCs and Other Business Enterprises: (23 October, 2017)

25 October 2017, Geneva

Mr. President,

1. Botswana associates herself with the Africa Group statement presented by Tunisia.
2. We would like to thank the Intergovernmental Working group for organizing this 3rd Session. We thank in particular, Ecuador as the Chairperson, for developing very detailed Elements to guide the development of a legally binding instrument to regulate activities of transnational corporations and other businesses in relation to human rights.
3. Botswana supports the development of a mechanism to ensure that transnational corporations and other businesses are held responsible and accountable in promoting and respecting human rights wherever they carry out their activities.
4. In this regard, we view the process of elaborating just how this can be done to be very important. The process however, is also delicate in that we need to have a careful balance on the liability of these companies as legal entities in their own right and their relationship with the States at which they are incorporated.
5. The draft elements before us propose a number of legislative and policy measures that States need to put into place in order to facilitate legal liability for acts committed under their territories, and to effect extra territorial remedy. We note these steps as important in so far as they would allow improvement in national legislation to safeguard human rights in general.

6. Caution must however be exercised to take into consideration the capacities of developing countries to develop and to implement these measures. The process must also consider the developmental ambitions of States, particularly the developing countries, majority of which are still developing national industries.

7. With specific relation to liability, the elements proposed in so far as State responsibility, infer amongst others that:

State Parties shall be responsible for actions or omissions of TNCs and OBEs when the latter:

- *Act under the instruction or control or direction of a State Party and violate or abuse human rights in this process.*
- *Perform activities entrusted to them under the State Party's legislation to exercise elements of governmental authority or delegation of political power or government authority, either by legal delegation or due to the absence or default of the official authorities, and in circumstances such as to call for the exercise of those elements of authority.*
- *Perform activities that the State Party acknowledges and adopts as its own.*
- *State Parties shall be internationally responsible if they act in complicity with the harmful activities of TNCs and OBEs or the State does not apply due diligence to avoid the impacts of such actions.*
- *State Parties shall adopt legislative and other measures to implement due diligence procedures and promote decent work in all the operations and the supply chains of TNCs and OBEs under their ownership or control.*

8. My delegation comprehends the intent behind these elements. However, we are of the view that a careful examination of the extent to which the State can take responsibility for activities of businesses needs to be reviewed thoroughly. Present crafting has potential to result in complicated liability issues for States and can result in far reaching cost implications and also hamper development ambitions.

9. We would like the inter-governmental working group to therefore, take particular care in crafting of these elements, bearing in mind individual capacities of States and the extent to which they can in practice regulate the activities of companies throughout their supply chains.

I thank you.