

Thank you Mr Chairperson Rapporteur

The Legal Resources Centre is a 4 decades old public interest law firm based in South Africa.

My colleagues and I are community lawyers who have represented communities against corporates and mining companies for 4 decades between us. We base our arguments on our experience, community instructions and numerous court cases.

We are adopting this slightly pompous introduction in reply to the expert corporate lawyer on the panel yesterday who introduced himself and rooted his knowledge and experience in taking instructions from corporate TNCs for a decade.

Communities in the south know themselves far better than TNCs, they know their histories and they will take responsibility for their destinies and that of their children. Our communities have knowledge and they have agency. They are not victims. Faceless TNCs in the capitals, their directors and their shareholders, their legal and financial advisors and financiers may never know what it means to be cared for in a community context.

We have time for just one story, but please know that there are many. This is the story of the Xolobeni community.

Ms Nonhle Mbuthuma Forslund is one of the great women leaders of the Xolobeni community, Pondoland South Africa, a community that has held out for more than a decade against an Australian mining company TEM ... a titanium mine that would destroy the community and the livelihoods of the families on their ancestral land. The struggle against a mine that has also lead to the callous murder of the community leader Bazooka Radebe 18 months ago. The murder remains unresolved. Nonhle cannot be here today because a bureaucrat in the Swiss Consulate in South Africa rejected her visa application three times over... partly because her village does not have street numbers and electricity bills. But in fact she has much more .... She belongs. She belongs to her community and the community's land. They know their history, they have an indigenous legal system and they remain committed to choosing their own development path in terms of pace and scale. Nonhle's community went to court saying that law from below gives them the right to say no and we should support her with a binding instrument at the level of international law.

Yesterday, the Southern African Permanent Peoples' Tribunal<sup>1</sup> Jurors' report was released. The Xolobeni and Marikana communities together with 17 other communities gave evidence before a jury consisting of peoples' jurors. They have respect for law from below. The expert corporate lawyers should take note of what the report says (and we can provide them with copies), for example:

1 With economic gain as the prime motivation, anything that hinders that objective is treated by states and TNCs as an obstacle that must be subdued or eliminated, guiding

principles or not. The pursuit of gains and profits for the TNCs and as revenue for governments place the communities and the environment at great risks.

- 2 The constant refrain “NOT without our consent,” demonstrates a peoples-rooted development.
- 3 It is important to explore legal mechanisms that hold national governments and the TNCs accountable at domestic, regional and national level. It is vital for States to recognise progressive and participatory indigenous customary law. We must engage in the discussion of treaty law and state domestic law that can be self-executing and monitored by communities as principal actors, in co-operation with civil society. The evidence presented to the peoples’ tribunal shows that existing state and corporate law continues to mistreat the poor.

Chair Rapporteur, whoever tries to stop or delay this process today, and those who have not even showed up, shall have that reality on their conscience. If European states genuinely think that implementation is the problem, then give us binding obligations that we the people and the courts can enforce.

We thank you.