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THIRD SESSION OF THE OPEN-ENDED  
INTERGOVERNMENTAL WORKING GROUP ON  
TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS  
ENTERPRISES WITH RESPECT TO HUMAN RIGHTS

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Oral Submission - Subject 2: Scope of  
Application

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Thank you Mr Chairperson Rapporteur

The Legal Resources Centre is a public interest law firm based in South Africa. We represent individuals and communities in protecting their rights against the impact of often unwanted and imposed development projects in the extractives and other sectors.

We endorse the principle of the primary responsibility of States to protect and promote the human rights of its citizens against all transnational corporations and other businesses enterprises who abuse these. We cannot afford another narrow instrument that creates yet more loopholes for impunity to thrive. But we also cannot pretend that States do not operate in the context of the corporate capture of their law and policy making processes and its implementation. This is pervasive on the African continent, a continent regarded as the new frontier for extractivism and large scale agri-business.

While we strongly endorse explicit measures to be included in the treaty to guard against corporate capture suggested by colleagues earlier, we fear that these may not be sufficient to break the stronghold of corporate capture over the States mandated to protect and promote the human rights of their citizens. In order to make meaningful progress, this process must acknowledge the importance of placing relative power in the hands of the peoples, communities and individuals whose rights are affected by the actions of TNCs and OBEs.

They must be central to the decision-making processes that authorize projects and their implementation. The inclusion in decision-making of affected individuals provides a further safeguard against corporate capture. The principle of Free, Prior and Informed Consent, already entrenched in international law and increasingly recognized as imperative to the success of

international voluntary standards, must be included in the treaty as a step towards not only providing *remedies* to human rights abuses, but indeed *preventing* those abuses from occurring. There is growing consensus in this room that prevention of abuse is indeed what we are collectively pursuing.

FPIC creates a meaningful seat at the table for those directly affected by the actions of TNCs and OBEs and at the same time strengthens the hands of States to act decisively in the interest of their people in the face of corporate interests. Even better, it ensures that rural women, who continue to bear the brunt of the impacts of TNCs and OBEs, are recognized as actors in their own development paths, rather than mere victims.

We thank you.