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

Oral Submission - Subject 4: Preventive Measures

Good afternoon Chairman Rapporteur. My name is Lucien Limacher from the Legal Resources Centre, South Africa.

One of the Legal Resources Centre’s missions is to seek cre­ative and effec­tive solu­tions by using a range of strate­gies. These, amongst others, include impact lit­i­ga­tion, law reform, par­tic­i­pa­tion in part­ner­ships and devel­op­ment processes, edu­ca­tion, and net­work­ing within South Africa, the African con­ti­nent and at the inter­na­tional level.

In capturing this spirit above, this section, **Preventive** measures, under the draft elements document can be the start of a creative and effective tool to stop the corporate impunity currently impacting affected communities and the environment.

Taking my colleague’s statement made yesterday that, “*we cannot pretend that States do not operate in the context of the corporate capture of their law- and policy-making processes and their implementation*,” it is fitting at this juncture that the following three points are made relating to the section on preventive measure:

The first point relates to the phrase, “*all concerned TNCs and OBEs shall adopt a vigilance plan consisting of due diligence procedures to prevent human rights violation abuses.*” Although a binding vigilance plan is welcomed it does not go far enough in preventing human and peoples’ rights including community rights that revolve around environmental pollution, degradation and even destruction of livelihoods. It is therefore proposed that the draft elements document incorporates, over and above a binding vigilance plan, an article or clause that allows for a procedure for public comment, consultation and, where relevant, consent or agreement with the plan at this early stage of a human rights risk assessment exercise or vigilance plan.

This brings me to the second point namely elaboration in the draft elements document to incorporate unequivocally the right to free prior informed consent ("FPIC”). The words “*states shall promote adequate consultation*” must, in the case of directly affected communities, include, “*free prior informed consent to be obtained from affected communities.”* Failing to recognise FPIC will leave affected communities by the wayside and allow the status quo to continue and over shadow universal human rights and to degrade the environment. FPIC and the right to development is recognised in the African Charter on Human and Peoples’ Rights, it is emphasised in the UN resolution A/HRC/RES/26/9 and in the Declaration on the Right to Development, adopted by the General Assembly through its resolution 41/128 on 4 December 1986.

Lastly, the third point refers to the human rights impact assessment. As mentioned in the Legal Resources Centre submission under general frameworks, it is critical than when a human rights impact assessment is undertaken that a similar impact assessment is carried out regarding the environment.

I thank you.

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