



STATEMENT DELIVERED BY SOUTH AFRICA

GENERAL OBLIGATIONS OF STATES AND TNCs AND OBES

**3RD SESSION OF THE OPEN-ENDED INTERGOVERNMENTAL WORKING
GROUP ON TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS
ENTERPRISES WITH RESPECT TO HUMAN RIGHTS,**

Check against delivery

25 OCTOBER 2017

Mr Chairperson

On ***General obligations***,

The elements focus intensely on the role of States. It is acknowledged that States have the primary duty to uphold human rights. At the same time the current status quo is a preference and not an obligation on TNCs and Other Business Enterprises to behave in a specified manner and address human rights violations and as such they are unfortunately confined to the term human rights abuses. For accountability purposes, an asymmetry is created in that such corporations are not held to account to the same standards that states are expected to account to in international law.

However, in this highly globalized world where entities such as the TNCs and OBEs assume power due to the amount of profits they make most often, accumulating profits larger than the GDPs of the nations in which they operate in, they need assume more responsibility and be held accountable by complying with all the internationally recognized human right and fundamental freedoms throughout their operations. This obligation further includes their positive contribution and direct obligation to communities in which they operate in as a mandatory requirement and with requisite reporting obligations. South Africa thus envisages that the above mentioned will clarify the issue of such direct international human rights law obligations of TNCs and Other Business Enterprises.

In previous sessions, we have listened to victim communities who have relayed their stories on the decimations of their lands and livelihoods by TNCs. For South Africa, it would be important for the elements to reflect that, prior to businesses being open in a particular country, more especially in communities the notion of Free Prior and Informed Consent (FPIC) must come into effect. States must ensure that citizens/communities are consulted to determine their vision for their land

In reference to State obligations, due to the transnational character of TNCS and OBEs, it is important to note that these entities while domiciled in their home state and apply uniform standards there do not necessarily uphold uniform standards in other jurisdictions in which they operate. These entities are therefore able to take advantage of weak national legislation in some host states with impunity. There is thus a greater need to include specific components on cooperation between home States and host States in holding these TNCs and OBEs accountable for human rights violations and mutual legal assistance.

I thank you.