



STATEMENT DELIVERED BY SOUTH AFRICA

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
ELABORATION OF AN INTERNATIONAL LEGALLY BINDING INSTRUMENT ON
TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES
WITH RESPECT TO HUMAN RIGHTS**

SUBJECT 5: LEGAL LIABILITY

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25 OCTOBER 2017

Mr Chairperson,

South Africa thanks the panellists who have shed some light on the subject of legal liability with regards to the elements document.

The proposals of South Africa are as follows:

- Despite the proposals of the creation of legislative measures within national legal systems, there is a need for the envisioned treaty to clearly state international minimum standards when it comes to the legal liabilities of TNCs and OBEs
- The document refers to criminal, civil and administrative liabilities in which TNCs and OBEs can be held accountable. Therefore it would serve a great purpose if the different sets of liabilities could form sub-themes in this section and further elaborated on for more explicit clarification in this regard.
- It is understood that TNCs and OBEs operate under various formations whether it be subsidiaries, affiliates, branches, value chains and these formations also bear a direct or indirect relationship with the parent company. In our view all these entities under the parent company must take responsibility at every stage of their value chain,
- In line with the above, the document must also speak to the role of state to state cooperation when it comes to holding TNCs and OBEs liable for their actions

with the inclusion of methods of cooperation between home state, host state and a third state.

- Chairperson in our discussions this week have highlighted that TNCs and OBEs including their subsidiaries, affiliates, branches as well as all others in the value chain must conduct due diligence on human rights on the jurisdiction of their operation. There thus needs to be a clear indication on that a company is liable both in the absence of these measures and when violations have taken place.
- Finally Chairperson, we believe that the range of questions posed by some delegations are a healthy part of any negotiation process. We think that all these issues can be more effectively addressed through a draft text to be presented by the Chair at the next session of the working group.