

**NATIONAL Statement delivered by SOUTH AFRICA**

**4th session of the Open-ended intergovernmental working group on Transnational Corporations and other Business Enterprises with respect to human rights**

***Check against delivery***

**OCTOBER 2018**

South Africa aligns itself with the statement delivered by Togo on behalf of the Africa Group.

At the onset, I would like to congratulate you Ambassador Luis Gallegos on your election as Chairperson of the Working Group. We thank the Deputy High Commissioner and Mr Potier for their commitment to this subject. Indeed as Mr Potier notes there is a large number of civil society, trade unions and business present here today to give their full weight behind our work.

The Working Group Session meets this week following important global developments in support of the treaty process. Most recently, and in the in the framework of the proposed legally binding instrument, my country hosted a consultative Conference as well as a visit to a community affected by a Transnational Corporation in the mining sector to hear the voices of our citizens on this subject. The collective voice is a resounding yes.

At the regional level, the African Union is involved with regional approaches and African solutions to address corporate criminality, which together with addressing illicit financial outflows is a pressing issue confronting the continent in the context of the Agenda 2063.

The resolution recently adopted by the European Parliament is to be commended and joins a growing number of actors who are actively supporting a legally binding instrument. The Committee on Economic, Social and Cultural Rights, which recently concluded its session, robustly engaged this issue and made pertinent recommendations in the area of accountability and access to remedies for victims of violations of economic, social and cultural rights in transnational cases.

South Africa remains committed to the letter and spirit of Resolution 26/9 and thanks the Chair for presenting the draft legally binding instrument on TNCs and Other Business Enterprises to be negotiated this week. The critical component of the mandate of Resolution 26/9 is to effectively close the current gaps and the void in International Human Rights and Humanitarian Law relating to unregulated operational activities of TNCs and OBEs which, by design, are transnational in their character. Its key objective is to provide, as a law of last resort, effective legal remedies to the victims of grave violations of human rights and fundamental freedoms committed by these entities.

Chairperson,

Children with serious skin diseases, and new-borns with respiratory impairments caused by the discharge of waste in their villages must stir our conscience to act collectively to conclude the treaty with a sense of urgency. As pointed out by the Deputy High Commissioner what is at hand is the perverse impact of the relatively powerful over the relatively weak. Surely we should demand that the guilty parties be punished, that reparations be awarded to those innocent victims, and that these violations be brought to an end.

Victims of transnational corporate abuses and violations face specific obstacles in accessing effective remedies. There is thus no reason why the general rules of international law should not apply to all actors – States as well as TNCs and Other Business Enterprises alike. International law imposes certain duties on international cooperation. This is a fundamental issue to be addressed by the envisaged treaty which will ensure access to remedy. Addressing jurisdiction issues; the challenges of transnational litigation; and mutual legal assistance are all important areas that this process must be seized with. Furthermore, the absence of regulatory and enforcement frameworks in certain countries cannot be viewed as a deterrent to enforcing the provisions of the treaty and holding TNCs accountable.

Chairperson,

The treaty process can no longer be viewed as “anti-business”. Currently, the world is faced with numerous challenges of poverty, unemployment, food insecurity and climate change. In this regard mobilizing investment and ensuring that it contributes to sustainable development is a priority for all countries. Globally, a new generation of investment policies is emerging, pursuing a development policy agenda with the aim of balancing the rights and obligations of States and investors. If human rights standards for TNCs and Other Business Enterprises become widely accepted, these entities will enjoy greater certainty, predictability and consistency with regards to their operations and profit making.

Thus a global standard will ensure that their responsibilities are clear and unambiguous and a level playing field is established.

Chairperson,

There have been various attempts to regulate the sphere of business and human rights. These have however, been in the form of non-binding soft laws which do not provide a legal framework that is enforceable and uniform; nor do they provide legal certainty and redress to victims.  In our view, this shortcoming can only be addressed through legally binding instrument applicable to all which will reinforce non-binding frameworks.

Chairperson,

Many TNCs and Other Business Enterprises have claimed to be conducting themselves responsibly and within the prescribed domestic legislation when doing business in foreign jurisdictions. These entities should therefore not be opposing this treaty, but embracing it since it will be confirming what they have already been enforcing in their day to day operations.

In conclusion Mr Chairman, my delegation looks forward to engaging constructively on the draft text, with a view to strengthening the instrument to the benefit of the victims. This includes ensuring that direct obligations are placed on TNCs and OBEs to ensure they are held directly held accountable for violations of human rights in the same way that British Petroleum was held accountable and paid large remedies in the Deep Water Horizon violations.

I thank you.