

**SOUTH AFRICAN STATEMENT TO THE**

**4 TH SESSION OF THE OPEN ENDED SESSION OF THE IGWG ON TNRANSNATIONAL CORPORATIONS AND OTHER BUSINES ENTERPRISES**

**GENEVA**

**ARTICLE 3 and 4**

**17 October 2018**

***Check against delivery***

Chairperson,

Thank you to you and the panellists.

On Article 3, my delegation wishes to reiterate that this Intergovernmental Working Group as created by Resolution 26/9 was mandated to create a legally binding instrument for Transnational Corporations and Other Business Enterprises. In this regard the scope should clearly reflect this.

As alluded to yesterday, no business enterprise may violate human rights but at the same time the focus is on TNCs and OBEs (as mentioned by some delegations). The text in the Zero Draft should therefore use the language as agreed by replacing “business activities of a transnational character” with Transnational Corporations and Other Business Enterprises to read:

This Convention shall apply to human rights violations occurring as a result of the operational activities of Transnational Corporations and Other Business Enterprises

* In addition, the text should include fundamental freedoms to read:

This Convention shall cover all internationally recognised human rights and fundamental freedoms and those further recognised under domestic law.

Furthermore, international humanitarian law including situations of occupation and armed conflict must be included.

On Article 4,

The word victim should encapsulate the following:

* Peoples or groups of peoples/ communities whose quality of life is affected/ has been affected by the activities of these entities resulting in HR violations.
* Peoples or groups of peoples/ communities who are suffering/ formerly suffered harm at the hand of these entities as a result of the operational activities.
* Furthermore, the definition must include individuals/ groups/organs of society who also suffer at the hands of TNCs and OBEs in line with the Declaration on the subject

Chairperson,

In line with Resolution 26/9, the definition under Article 4.2 must be specific and reworded to “Transnational Corporations and Other Business Enterprises”. As formulated the term “business activities of a transnational character” covers one part of the mandate.

To limit the definition of TNCs and OBEs “for profit economic activity” may give TNCs a route to escape given the fact that some of their activities may include non-profit activities. Therefore and in addition to the above, the scope should include the methods in which the entity can be involved. In this regard, the definition for a transnational corporation should include: an entity whether fully or partially state-owned or privately owned which own or controls production, distribution, services that operates across more than two jurisdictions including a partnership, association, joint venture or proprietorship