

**SOUTH AFRICAN STATEMENT TO THE**

**4 TH SESSION OF THE OPEN ENDED SESSION OF THE IGWG ON TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES**

**GENEVA**

**PREAMBLE, 14, 15**

**18 October 2018**

**Check against delivery**

Chairperson,

**Preamble**

1. This Working Group derives its mandate from Resolution 26/9 which stipulates that this Working Group will elaborate an international legally binding instrument for transnational corporations and other business enterprises. The resolution acknowledged that TNCs and OBEs have a responsibility to respect human rights and this instrument would regulate the activities of these entities in International Human Rights Law.
2. My delegation is concerned that the Preamble of this draft falls short of ensuring the obligations of the TNCs. In this regard, the Preamble should include the following:

* Recalling the UN Charter in its totality;
* Recalling the outcomes of the all major conferences and summits in this field including the UDHR, VDPA, DDPA in relation to the cardinal principle of non-discrimination;
* Strongly underlines that the phenomenon of globalisation and its negative impact on the economies of the developing countries has brought about disparities in the equitable sharing of the benefits of globalisation and emphasises the imperative need to mitigate the challenges of poverty and underdevelopment, the realisation of the unfinished Millennium Development Goals and the need to make the Right to Development and the 2030 Agenda for Sustainable Development a reality for everyone,
* Underlining the void that exists in the International Human Rights Law and Humanitarian Law that leaves these entities unregulated, leading to lack of uniformity;
* Underlines the need for TNCs and Other Business Enterprises to be held accountable in international human rights and humanitarian law for human rights abuses violations and the imperative need to hold these entities accountable;
* Stressing that TNCs and OBEs, irrespective of their size, sector, ownership and structure, have a duty and obligation to respect all human rights and fundamental freedoms, including in situations of armed conflict and situations of occupation;
* Underlining the positive contribution TNCs and OBEs should make to ensure the means of implementation for the realization of human rights and sustainable development;
* We agree with many speakers that the rights of women and children be central to the treaty.

**ON ARTICLE 14**

1. My delegation notes the creation of the Committee. A Treaty Monitoring Body with full mandate to issue urgent communications and undertake investigative enquiries into territories where consistent patterns of violations are reported is just one mechanism. This working group should interrogate how a prosecutorial mechanism at the international level to adjudicate on allegations of grave and serious violations could be included in the treaty and how such a binding international mechanism of judicial control to end corporate impunity should be considered.
2. In light of this, this Article must be very clear about the following provisions in relation to the Committee:

* The process of nominating members of the Committee should be specific and transparent. This will ensure that there is no conflict of interest and bias in the members selected;
* The members should be given the power to hear complaints from peoples and groups of people;
* Should be able to issue binding decisions;
* The Committee should be able to request information from companies as well as State agencies. This could include visits to either the country or the company with the aim of investigating or gathering information beyond the regular reports provided;
* The Committee should be permitted to request Transnational Corporations and Other Business Enterprises to appear before it in the event that it is implicated in human rights violations;
* The Committee should be able to make a determination of the types of remedies that must be given to victims;
* The general order to be taken by the Committee to review cases should be incremental: Cases should exhaust domestic courts and regional courts before reaching the international level;

1. Closely linked to the powers of the Committee, it is imperative that there is a fund solely dedicated to the access of justice for the victims of human rights violations by these entities, particularly from developing countries be established. This fund must be maintained by the TNCs and OBEs to whom the violations emanate from. It would be impractical for contributions of the fund to be solely the responsibility of the State.

**ARTICLE 15**

1. The Article must have a provision that stipulates that this Treaty will not prejudice obligations taken in other Treaties. Furthermore, nothing in the treaty shall be interpreted as impairing the inherent right of all peoples to enjoy their human rights and fundamental freedoms