

**SOUTH AFRICAN STATEMENT**

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

**GENEVA**

**ARTICLES 10, 11, 12**

**17 October 2018**

 ***Check against delivery***

**Article 10: Legal Liability**

1. While States have the primary duty to uphold human rights, the current status quo is a preference and not an obligation on TNCs and Other Business Enterprises to behave in a specified manner and be accountable for human rights abuses and violations. These entities who accumulate profits larger than the GDPs of many developing countries in which they operate in, need to assume more responsibility and be held accountable by complying with all the internationally recognized human rights and fundamental freedoms throughout their operations.
2. This obligation must include their positive contribution and direct obligation to communities in which they operate in as a mandatory requirement and with requisite reporting obligations, including financial and non-financial reporting. This should be explicitly referred to in the draft treaty.
3. Furthermore, adherence by TNCs and Other Business Enterprises to the principle of Free Prior, Informed and Continuous Consent must come into effect. States must also ensure that citizens/communities are consulted to determine their vision for their land
4. As pointed out by some of the panelists, there are circumstances whereby regulatory and enforcement frameworks are absent or limited. The draft treaty would need to address these challenges.
5. There is a thus greater need to include specific components on co-operation between home States and host States in holding these entities accountable for human rights violations and mutual legal assistance.
6. Ensuring that natural and legal persons are held criminally, civil or administratively liable for human rights violations is imperative. All possible ways in which TNCs and OBE may be involved in violations must be covered. The issue of making provision for criminal liability conditional as in Article 10.8 should also be cautioned and the language revised appropriately. Violations recognized as crimes under international law and for which international law require the imposition of criminal sanctions, including investigation and prosecution, should be incorporated into national criminal law and reflected in Article10.8.

**Article 11: Mutual Legal Assistance**

1. International judicial cooperation and mutual legal assistance is critical to effectively enforce the Treaty and to complement provisions on extraterritorial obligations.
2. Ensuring Mutual Legal Assistance between States will provide the necessary international legal framework for mutual cooperation between two countries, including in relation to criminal investigations.
3. The Article must also make provision for technical assistance including adequate training and other initiatives.

**Article 12: International Cooperation**

1. The provisions of this Article should be strengthened to also reflect obligations of TNCs and Other Business Enterprises. It is not only about international co-operation of States but also the co-operation of TNCs and Other Business Enterprises in ensuring redress for human rights violations that they have caused or contributed to as already reflected in the OECD Guidelines for Multinational Enterprises. The purpose of the treaty is to go beyond voluntarism and ensure that they are now binding.
2. The Article should draw from the UN Charter, whereby aachieving international co-operation to solve international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all is ensured.
3. The Declaration on the Right to Development provides an essential guide to the manner in which States, the international community and all organs of society must act and cooperate to ensure an enabling environment for development that is sustainable, just, equitable and inclusive.States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.
4. The Article should include the general obligation of States to cooperate in respect to identification, investigation, prosecution and enforcement of judicial orders in cases of human rights abuses committed by or with the participation of TNCs and Other business enterprises under their jurisdiction.

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