



Statement by the Centre for Applied Legal Studies, School of Law, University of the
Witwatersrand

To

Sixth session of the Open-ended Intergovernmental Working Group on Transnational
Corporations and other Business Enterprises with respect to Human Rights

Regarding the

The second revised draft of the Legally Binding Instrument to Regulate, in International Human
Rights Law, the Activities of Transnational Corporations and Other Business Enterprises

October 2020

Mr Chairperson, I make these submissions relating to Article 8 on the behalf of the Centre for Applied Legal Studies (CALS) and the African Coalition for Corporate Accountability (ACCA).

We submit that the legal liability of corporations must be explicitly provided for in the second revised draft of the LBI. We pair this submission for direct legal liabilities of corporations with the call for the LBI to impose direct legal obligations on corporations to respect, protect, promote and fulfil human rights. We note that the continued approach, is to impose only obligations upon states to regulate corporate behavior. We are of the view that the treaty should enshrine international human rights obligations directly upon corporations which would have numerous benefits namely:

- a. it would not depend on states – often with weak capacity – to domesticate any obligations;
- b. it would provide a clear indication that businesses are bound by fundamental rights;
- c. it would provide a standard to address new forms of violations.

To ensure that the legally binding instrument delivers on the advancement of corporate accountability for human rights violations, it must establish a strong standard of corporate legal

liability. However, there can be no accountability if there are no sanctions. And there can be no sanctions if there is no robust and independent mechanism to adjudicate legal liability and impose the appropriate sanctions.

Mr Chairperson, at its essence, the LBI is set to address the problem of inconsistent protection caused by the various differences in the domestic laws of States as identified by the former UN Secretary-General's Special Representative for Business and Human Rights, Professor John Ruggie who stressed that greater legal protection was highly desirable.

It should be noted that enforcement through domestic laws and committee only would not fully plug the holes of corporate impunity. While we remain pleased that the establishment of a Committee has remained of importance in the Treaty, we remain concerned by the treaty's failure to make provision for an International **Independent Judicial Mechanism** that would go further than the functions of the committee as stipulated in Article 15 by uniformly enforcing the liability of business enterprises for violating human rights. We thus submit that an independent judicial mechanism be written into the LBI that will receive complaints, investigate, adjudicate and sanction business enterprises for human rights violations.

I thank you.

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