



STATEMENT DELIVERED BY SOUTH AFRICA

PREVENTATIVE MEASURES

Check against delivery

25 OCTOBER 2017

Chairperson,

At the heart of the legally binding instrument will be Access to Remedy as a fundamental right and the requisite enforcement mechanism. In our view, when we speak of the operationalisation of “prevention” and “preventive remedies” in the mandate of the HRC as well as contained in core international human rights instruments, we are speaking directly to the envisaged instrument.

This section falls in the ambit of both state and TNC obligations, and of course Access to Remedy and we welcome the specific chapter. Alternatively the chapter could be titled state obligations, including preventive measures. We acknowledge that key to this section is the issue of giving a legally binding nature to due diligence policies, namely to identify, prevent that these violations do not occur in the first place, mitigate and account for their impacts of human rights.

Key issues when we speak of prevention includes:

- The general obligation of international cooperation as a cornerstone of international human rights law, beginning with the UN Charter. Furthermore the issue of mutual legal assistance must be taken into account.
- For States and under the due diligence principle, this requires an obligation, to fight breaches of international law by implementing preventative measures for damage and violations as well as punishment measures
- A legal obligation not merely an expectation on States to set obligations for TNCs and OBEs domiciled in their territory and/or jurisdiction to uphold all human rights and fundamental freedoms.
- For due diligence by TNCs and OBEs, the minimum standard must but be set out by the State and cannot be determined by the entity. These standards must be universal and uniform in its application so that all will be assessed by the same benchmark. As we heard requirements for due diligence and Corporate Social Responsibility as per voluntary initiatives are hardly adhered to.

- Key to preventative measures is effective consultation with affected communities. Could Ms Suarez-Franco assist on possibilities in this regard?

I thank you. .