

**SOUTH AFRICAN STATEMENT TO THE**

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

**GENEVA**

**ARTICLE 5**

**18 October 2018**

***Check against delivery***

Chairperson,

Thank you to the panellists for sharing their expertise in this area.

1. Addressing jurisdictional challenges is an important area of the treaty and need for the victims who have failed to seek redress both in the home or the host state; with their cases being litigated for decades. Transnational corporations have been able to operate outside of the jurisdictional reach of their home corporate laws and regulations, thus exploiting legislative frameworks that are vague and/or not properly regulated or enforced.
2. The question that we have to ask is whether this Article on jurisdiction will cover the huge remedial gap that exists. Will it ensure that a victim can be guaranteed access to justice both where the violation occurred and faced with situations whereby TNCs settle out of court as a way to circumvent being held accountable? On the other side, will it ensure that the home states litigate effectively? We know of many court cases in developed countries that were unsuccessful as the courts reasoned that the proximity between the parent companies and the human rights violations was insufficient and therefore rejected them. Chairperson, we are not entirely convinced that the provisions of this Article will adequately address these challenges as it maintains the status quo that currently exists.
3. This Article must make specific provision for preventing home state courts from declining jurisdiction on the basis of the *forum* *non conveniens* in order to ensure that the victims can access justice.
4. Furthermore, the draft treaty should also take into account the possibility of accessing justice in a third state where the victims may be domiciled after the violation has taken place. Regional approaches in accessing justice must also be included.
5. Information regarding the jurisdictional activities of the transnational corporation must also be made available to local authorities within the jurisdiction to ensure transparency and accountability. This draft Treaty must account for the complex structure of their activities.
6. The implementation of this Treaty cannot be limited to one State and requires the duty of international co-operation. Therefore the call for the reduction of regulatory, procedural and financial obstacles among States is supported by my delegation. It is imperative that there is cooperation of judicial systems to curb any delay for the justice of victims.
7. In addition, Article 5.2 should include:

* Parent companies interest in the subsidiary as mentioned by Mr Meeran
* The issue of subcontractors and suppliers;
* Partnerships with whom they have an established commercial relationship;

1. The Article must further include reference to breaches of the duty of care by parent companies in ensuring that their subsidiaries do not cause harm to the communities in which they operate in.
2. We agree with Mr Meeran that the realities of class action lawsuit must be taken into account, including the consent aspect. In the South African constitutional jurisprudence there is a test of public interest measures when consent cannot be obtained.
3. Finally Chairperson, the over-reliance of existing domestic laws could create a loophole in implementation of the treaty. Each domestic system differs in the degree of stringency and enforcement. The purpose of the international treaty is to create uniform norms and standards in international law that all States must aspire to.
4. I thank you.