



**SOUTH AFRICAN STATEMENT TO THE  
4<sup>TH</sup> SESSION OF THE OPEN ENDED SESSION OF THE IGWG ON  
TRANSNATIONAL CORPORATIONS AND OTHER BUSINES  
ENTERPRISES**

**GENEVA**

**ARTICLE 9**

**16 October 2018**

***Check against delivery***

Chairperson,

1. In adherence to the letter and spirit of this text which has been coined as a “victims text ” or rather the rights-holders’ text, the subject of Prevention is an integral part of this Treaty as it highlights the importance of ensuring that human rights violations do not take place from the very commencement of business activities.
2. 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 treaty.
3. Notwithstanding the need for effective remedies, most TNCs & OBEs will continue with violations on the premise that they will pay remedies and settle out of court. A Prevention Mechanism is imperative and must be strong enough to protect peoples and communities and ensure that lives are not lost in the first place.
4. The call for the text to make specific reference to the plight of women and children and the promotion and protection of their human rights is well supported.
5. It is important that this Article further refer to the following:

- a) The Article must be guided by the “duty of care” which creates the legal obligation for transnational corporations and other business enterprises to adhere to a standard of reasonable care while performing any acts that could foreseeably harm others,
- My delegation is in agreement with the concept of human rights due diligence as suggested by the panellist and for this, setting out a standard which is universal and uniform in its application so that all TNCs will be assessed by the same benchmark is important;
  - Article 9.1 should refer to the consideration of human rights impacts as well as environmental impacts and these assessments must be conducted independently and transparently at cost to the company involved,
- b) The reporting referred to in Article 9.2d should not be limited to non-financial matters but should be inclusive of financial and non-financial matters. It must be understood that the two components are mutually reinforcing therefore must be interrogated together,
- c) The cardinal principle of Free Prior and Informed Consent (FPIC) must be explicitly mentioned and should guide the consultations as addressed in Article 9.2g. Further to this, we cannot ignore the fact that sometimes Transnational Corporations (TNCs) and Other Business Enterprises (OBEs) have increased or changed their business plan after consent has been given by communities. In this case, the notion of “continuous consent” should be added to ensure that communities have the right to suspend or stop developments that were not previously agreed upon.
- d) Article 9.5. It is very important that TNCs and OBEs understand that Prevention Mechanisms should be an integral part of the business

model as opposed to being viewed as “additional administrative burden”. Furthermore, in understanding that TNCs and OBEs work through subsidiaries, agencies, representatives and so forth which may be small or medium sized, all of these entities should be held accountable for human rights violations.

- e) In addition to the above, the text should reflect clear obligations to halt production as well as mitigating strategies. These would be important components in order to stop violations.
- f) Lastly, Chair, my delegation believes that this Article should make provisions for Prevention Mechanisms in conflict situations and situations of occupation where people are more vulnerable to human rights violations by TNCs and OBEs in particular women and children.