

**ARTICLE 2 and article 8**

**STATEMENT OF PURPOSE and the rights of victims**

**STATEMENT DELIVERED BY south africa**

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Chairperson,

1. The key objective of Resolution 26/9 of 27 June 2014 is to provide, as a law of last resort, effective legal remedies to the victims of the grave violations of human rights and fundamental freedoms committed by Transnational Corporations (TNCs) and Other Business Enterprises (OBEs) under International Human Rights Law and International Humanitarian Law.
2. Underpinning the Guiding Principles on Business and Human Rights for the purposes of deterring and preventing abuses and providing remedies with legal certainty is important.
3. Currently these entities, whose operational activities have a transnational character, do not have any universal regulatory framework guiding their operations in the global economic system. The notion of Corporate Social Responsibility (CSR) which is a voluntary Code of Conduct still currently used by the Corporate Sector has no force of law and cannot be used in litigations, by competent courts for legal remedies in the cases of grave and serious violations of human rights committed by these entities. This is why during the struggle against apartheid, South Africa wanted sanctions definitively as opposed to voluntarism of corporate social responsibility which is reliant on the goodwill of business.
4. No business enterprises may violate human rights. At the same time upholding Resolution 26/9 should focus specifically on the transnational corporations. When you generalize the needs of the most vulnerable victims, you are sure to lose the essence of what is needed. This is not the intention of this process. This is why Professor John Ruggie was called the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises in the first place.
5. **They key objectives and purpose of the treaty is therefore:**
6. the provision of **effective legal remedies** to the victims of the grave and serious violations of human rights and fundamental freedoms by TNCs and Other Business Enterprises;
7. To complement and reinforce weak/absent national legislation with the view to mitigating the overwhelming corporate power and to create a uniform and level playing field;
8. To bring about universal human rights norms and standards in the operations and activities of the TNCs and Other Business Enterprises across the globe;
9. To clarify and contextualise the notion of Extra-territorial jurisdiction and the concomitant legal obligations;
10. To create enforcement mechanisms at the national and international level. A Treaty Monitoring Body with full mandate to issue urgent communications and undertake investigative enquiries into territories where consistent patterns of violations are reported is just one mechanism. The Chair and panellists should please elaborate on how a prosecutorial mechanism at the international level to adjudicate on allegations of grave and serious violations could be included in the treaty.

**Article 8**

1. The “rights of victims and rights-holders” is the key objective and rationale for the draft treaty’s existence and should be strengthened. A definition of a “victim and the rights-holders” for the purposes of the draft Treaty should be considered.
2. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005 is of paramount importance and should be drawn from.
3. The first point of departure is the recognition of the plight of victims, including their immediate family or dependents as bearers of human rights who individually or collectively suffered harm through violations of human rights committed by TNCs and Other Business Enterprises. Paragraph 1 should therefore emphasize this point and recognize that they are central to the draft treaty.
4. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws provide that a victim who has suffered violence or trauma should benefit from special consideration. Administrative procedures to ensure justice and reparation are needed. Article 8.10 should be frontloaded.
5. What then should follow is the operational aspects, including the right to remedy for victims of human rights abuses and violations committed by TNCs and Other Business Enterprise. This includes the victim’s right to :

(a) Equal and effective access to justice;

(b) Adequate, effective and prompt reparation for harm suffered;

(c) Access to relevant information concerning violations and reparation mechanisms

6. We agree with panellists on the inclusion of “precautionary measures” to stop immediately the harm or to prevent the harm until the case is decided.

7. An International Fund focused on legal assistance for Victims is important. The fund is to facilitate access to justice which is the key objective of the treaty. The Chair and panellists are requested to share their views on the modalities of a fund, including the direct contribution of TNCs and Other Business Enterprises to the Fund and where it could be located.

8. Finally, the draft treaty must recognize that TNCs and Other Business Enterprises must contribute to the requisite means of implementation for the realization of all human rights; for the eradication of poverty; and that they must adopt sustainable and ethical business practices.