

**SOUTH AFRICAN STATEMENT**

**4 TH SESSION OF THE OPEN ENDED SESSION OF THE IGWG ON TRNRANSNATIONAL CORPORATIONS AND OTHER BUSINES ENTERPRISES**

**GENEVA**

**ARTICLE 6, 7 and 13**

**16 October 2018**

***Check against delivery***

**Article 6**

1. It is imperative that the treaty not only apply to all violations of international human rights law but also to international humanitarian law which constitutes crimes under international law. There must be no hierarchy of human rights. South African courts approach a conflict over competing rights by attempting to find a balance between the various rights, instead of promoting one over the other.
2. South Africa comes from a brutal history of apartheid to which business was a central feature to the oppression of the majority of our people. In this regard, my government wishes to underline the generational impacts of the activities of Transnational Corporations where they have decimated lands and polluted water resources and thus undermining the livelihood of communities for generations. As a “victims text” therefore, it would thus be a shame to limit this instrument to atrocities which have taken place after this Treaty has come into force.

**Article 7**

1. Providing victims with the choice of the most favourable applicable law, between that of the State where the harm occurred (home state) or where the TNC is domiciled (host state) is paramount. Additionally, there are circumstances when a victim is not able to utilize the courts of the home or the host state but are in a third state, and this needs to be taken into account.
2. Also, the applicable law should make reference to competent regional courts as an avenue of remedy.

**Article 13**

Consistency with international law

1. While respecting the principles of sovereign equality and territorial integrity, the duty to cooperate as a fundamental tenet of international law must apply and must be incorporated in the text.
2. In Article 13, 7, clear language underpinning investment agreements which calls for equitable relations and respect for human rights should be emphasized. This article must not preclude any measure to address disadvantageous and constraining bilateral trade investments. It is important for Agenda 2030.