

Centre for Applied Legal Studies: Oral Submissions to the IGWG
Panel IV: Human Rights to be included

Thank for the opportunity to make oral submissions to the IGWG on the Elaboration of a Binding Instrument.

My name is Nomonde Nyembe. My colleague (Baone Twala) and I make these submissions on behalf of the Centre for Applied Legal Studies an NGO and law clinic registered in South Africa. These submissions supplement the written submissions made to the IGWG in June.

In summation, we submit that the content of the Binding Instrument and the process for the development of this instrument be mindful of the gendered impact of business activities and business activities impact on poverty.

We respectively remind the IGWG that poverty is not merely about the lack of financial resources but also concerns a culmination of human rights violations. Poverty is expansive and severe and its impacts on people's lives are grave and multifaceted. People who live in poverty remain trapped in a cycle of poverty.

If the binding treaty is sincere about eradicating human rights violations it should also address the culmination of those human rights violations: poverty. It should do so because corporations not only benefit from but in often rely on poverty to ensure profit maximisation. It should also do so because the UN has on at least two occasions noted the importance of eradicating poverty: first in the UN Millennium Declaration and secondly in the UN Guiding Principles on Extreme Poverty.

The Binding Treaty should therefore: (i) expressly denounce poverty; (ii) include practical provisions demanding that states and corporations not exploit poverty; (iii) address human rights violations related to the exploitation of poverty and (iv) create post-operations obligations that ensure that corporations do not leave communities in worst human rights conditions than they found them.

I am Baone Twala and would like to highlight the need for a gender perspective for the binding treaty. Failing to take a gender perspective to both the process for the development of a binding instrument and the content thereof would amount to a lost opportunity to note and highlight firstly, the contextualised form of human rights violations. It would also be a failure to pry open the variety of different identity-related human rights impact and result in context-blind remediation. A gendered impact would also highlight the intersectional nature of human rights violations.

A gender conscious approach is aligned with the international law generally, from the adoption of the Universal Declaration on Human Rights to CEDAW and

is aligned to the approach adopted by the UN in terms of business and human rights: it appears in the UNGPs.

We therefore recommend that the IGWG: (i) assess the implications for women and men of the process for the development of the binding instrument and the nature, content and scope of the binding instrument; (ii) ameliorate and prevent the adverse gender implication in both the process for and the content of the binding instrument (by including specific clauses that speak to women's experiences such as sexual harassment and pay discrimination); and (iii) monitor and evaluate the effectiveness of the instrument process and content in preventing and ameliorating gender discriminatory business practices.