

GENERAL ASSEMBLY
HUMAN RIGHTS COUNCIL

Second Session of the Intergovernmental working group for the elaboration of an International Legally Binding Instrument on Transnational Corporations and other Business Enterprises - Panel VI, Lessons learned and challenges to access to remedy (selected cases from different sectors and regions).

28 October 2016

Oral Statement

I speak on behalf of the CETIM and Legal Resources Centre of South Africa (LRC), member organisations of the Global Campaign to dismantle corporate power, end impunity and reclaim people's sovereignty.

Thank you Mister moderateur,

In relation to today's panel, we have four specific, substantive and procedural submissions.

1. With regards to the substance of the Treaty, we think that it is imperative to include the peoples' right to development as recognised in the UN Declaration on the Right to development and the African Charter on Human and Peoples' Rights as a core principle of the binding instrument on transnational corporations and other business enterprises with respect to human rights.
2. With regards to procedure, the LRC submits that effective participation by affected communities in the Treaty development process should be facilitated.

Within those two topics, the following specific recommendations are made to the IGWG:

- The peoples' right to development, as contained in the African Charter on Human and Peoples' Rights ("African Charter") and as given content by the African Commission on Human and Peoples' Rights ("African Commission"), must be included as a founding principle and enforceable right in the Treaty. This will ensure that the highwater mark of the Treaty is not to mitigate and compensate for adverse human rights impacts, but to *prevent* these, and protect and promote community participation in development.
- The Treaty should expressly recognise the customary rights to land and natural resources of the affected communities as property rights, whether documented or not, and provide for appropriate compensation and reparation where applicable.
- The Treaty must require the free, prior and informed consent of all communities with customary rights to the affected land and resources. FPIC is a procedural and a substantive right: it includes the protection of peoples' right to full and timely disclosure of all relevant information prior to the approval of the project, the recognition of and respect for the customary decision making processes of the affected communities and, ultimately, the right to say no thank you to a project.
- Communities from around the globe who are, or will be, adversely affected by corporate activity must be at the centre of the development of the Treaty, including all associated discussions and negotiations.

In relation to this final point, we offer practical suggestions for involving affected communities such as:

- Setting aside adequate time to hear directly from representatives from affected communities around the globe.
- Encouraging states and civil society to source funding to bring community members to Geneva to share their stories with the IGWG.
 - Facilitating a process whereby the experiences and recommendations of affected communities can be meaningfully considered in the drafting of the Treaty, even when these are not expressed in legal language.
- Establishing and conducting focus groups with affected communities.
- Specifically encouraging states and civil society to facilitate written submissions and participation of affected communities who cannot travel to the sessions.
- Sensitising members of the IGWG and drafters of the Treaty to understanding the connection between the lived experiences of affected communities and the development of the Treaty, so that the Treaty reflects realities on the ground.

I thank you for your attention.