



**Statement by the Centre for Applied Legal Studies, School of Law,
University of the Witwatersrand**

to

The 5th Session of OEIGWG

14 October 2019

A huge concern for the African context is the effects of globalisation on the continent as well as the power imbalances between states and corporations. Weak and sometimes non-existent legislative frameworks in attempts to attract investments for development, present an avenue that is exploited by transnational corporations to get away with impunity. Africa continues to lose billions of revenue through illicit flows, money that could be used to address the abject poverty in which Africans live. This is at times exacerbated by loans from international financial institutions which sometimes impose conditionalities leading borrowing States to violate their obligations under the Internationally recognised human rights by adopting unjustified retrogressive measures which may have a disproportionate impact on marginalized individuals and groups. The Centre for Applied Legal Studies, a member of the African Coalition on Corporate Accountability (ACCA), would like to take this opportunity to make the following submission:

Firstly, we are of the view that it is of importance that businesses be recognised to have obligations to respect, protect and fulfill rights. Those obligations need not be identical with the state but, in their own way, corporations should be required to help

advance rights. We note that the approach adopted in the draft, to impose only obligations upon states to regulate corporate behavior. We are of the view that the treaty should enshrine international human rights obligations directly upon corporations which would have numerous benefits namely:

- a. it would not depend on states – often with weak capacity – to domesticate any obligations;
- b. it would provide a clear indication that businesses are bound by fundamental rights;
- c. it would provide a standard to address new forms of violations.

Secondly, we also note the removal of references to international financial institutions thus failing to address the role they sometime play in aiding and abating the architecture of corporate impunity through their financing, risk. In this regard we would urge the following:

- a) We urge states to ensure that this draft gives us the means to hold International Financial Institutions directly accountable for human rights abuses resulting from their activities -- including financing and support of transnational corporations.
- b) States must also be held accountable for their own human rights obligations in their role as members of international financial obligations as confirmed by treaty bodies
- c) Stronger enforcement mechanisms to ensure that transnational corporations and IFIs can be held liable for their role in perpetuating human rights abuses.

Lastly, in tandem with the aforementioned, we remind the open-ended intergovernmental working group and state representatives that in his recommendation on the follow up on his mandate, Professor John Ruggie stressed that greater consistency in legal protection was highly desirable. To this end, he specifically suggested the drafting of a new international legal instrument to address this problem of inconsistent protection. While we are pleased to see the establishment of a Committee has remained of importance in the Treaty, we remain concerned by the treaty's failure to make provision for a global judicial mechanism that would go further than the functions of the committee as stipulated in Article 13 by uniformly enforcing the liability of Transnational Corporations for violating human rights. We thus highly recommend that a global judicial mechanism be written into the draft treaty so

as to ensure that all victims of corporate human rights violations and abuses are able to receive adequate recourse.

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