

# *African perspectives on the legally binding treaty on business and human rights*

5<sup>th</sup> Session Open-Ended Intergovernmental Working Group Side Event

**Room XXIII Palais des Nations  
13:00 – 14:00 on 17 October 2019**

**ORGANISERS:** African Coalition on Corporate Accountability (ACCA), Centre for Applied Legal Studies (CALs), Feminists for a Binding Treaty (F4BT), Federation of Women Lawyers (FIDA Kenya), National Association for Women's Action in Development (NAWAD), Coalition for African Lesbians (CAL), Womankind Worldwide, Southern African Campaign to Dismantle Corporate Power, Lawyers for Human Rights (LHR), Association for Women's Rights in Development (AWID), Initiative for Social and Economic Rights (ISER), Uganda Consortium on Corporate Accountability (UCCA), Justiça Ambiental (JA!) – Friends of the Earth Mozambique and the Centre for Human Rights (CHR) at the University of Pretoria.

*Join us for a discussion on regulating corporate power and ending corporate impunity and corporate capture of democratic structure in our struggle to end human & environmental rights violations and abuses in Africa and globally.*

From the widely-known case of oil pollution by the Royal Dutch Shell Group in Ogoniland to tax evasion by Acacia Mining in Tanzania to the class action by the Presbyterian Church of Sudan et al against Talisman Energy Inc and Sudan, it is clear that voluntary principles and corporate social responsibility are not working to make transnational corporations respect human and environmental rights. Moreover, victims and communities, like the Ogoni people who traverse the world seeking justice, soon realize the accountability gap in legal mechanisms that can adequately tackle the impunity of transnational corporations. Needless to say, these violations and abuses by transnational corporations are not only widespread in Africa and the world, but they are enabled by a global architecture of neocolonial and extractivist capitalist development systems. It is therefore imperative for African nations to build on regional efforts towards a business and human right policy framework<sup>1</sup> and be a major driving force in pushing for a comprehensive and bold UN treaty on corporate accountability.

*For Us, By Us: Africans for a Binding Treaty* seeks to bolster regional collaboration and strengthen support for the binding instrument by highlighting the disproportionate impact on TNCs and OBEs on human and environment rights in the African Continent. The event seeks to bring together government representatives, academics, trade union representatives, civil society and affected communities during the October 2019 IGWG session in order to share perspectives and strategies.

## BACKGROUND

In June 2014 at the UN Human Rights Council's 26th session, Ecuador and South Africa initiated a resolution for the "Elaboration of an International Legally Binding Instrument on Transnational Corporations (TNCs) and Other Business Enterprises (OBEs) with respect to human rights through resolution 26/9 of 2014. The first two sessions, held in 2015 and 2016, were dedicated to conducting constructive deliberations on the pertinent conceptual issues such as the form, content, nature and scope of the envisaged instrument. Countries, mostly from the Global South, have expressed continuous support for the Treaty and this is indeed an important step for gender justice, environmental rights and peoples' movements struggles for corporate accountability. The ongoing negotiations present an opportunity for African governments who have often decried international instruments as tools of neocolonialism<sup>2</sup> to shape a strong framework that could put an end to corporate impunity and advance justice.

Given the importance of this process in streamlining the law and policy at the global level, and its subsequent role in shaping the human rights protection and the corporate accountability landscape in Africa, this side event seeks to articulate Africa's position and present demands that will make the Binding Treaty work for Africans. By sharing examples from an African context, the event will aim to provide concrete suggestions that will strengthen the draft treaty to ensure it reflects the lived realities of Africans.

## OBJECTIVES

1. Share specific case studies from Africa that highlight the shortcomings of present international mechanisms to hold TNCs and OBEs accountable;
2. Discuss the critical need to protect Human Rights Defenders (HRDs), indigenous peoples' rights including the right to free, prior and informed consent, and incorporate a strong intersectional feminist lens and gender justice approach;
3. Articulate Africa's CSO position and provide specific language recommendations to ensure that the binding instrument is responsive to the context of the Global South, and Africa in particular; and
4. Learn and build from the history and process of the treaty thus far and to build support for the treaty process from African States and their constituencies through shared learning and robust participant exchanges.

<sup>1</sup> For example, The Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria (Communication on 155/96); Development of guidelines through the established Working Group on Extractive Industries, Environment and Human violations at the African Commission on Human and Peoples' Rights (ACHPR); The Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights known as the Malabo Protocol.

<sup>2</sup> Avoiding ICC neocolonialism <https://www.iol.co.za/dailynews/opinion/avoiding-icc-neo-colonialism-1681411>