

Attention: Minister M. E. Nkoana-Mashabane

Department of International Relations and Cooperation

Private Bag X152

Pretoria

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Republic of South Africa

02 July 2015

Dear Minister Nkoana-Mashabane

RE: the Inter-Governmental Working Group Meeting on the development of a treaty on Trans-National Corporations ('TNCs') from 6-9 July 2015, Geneva

We write to you as an Alliance of affected communities, civil society and labour organisations and research institutions. We attach a list of the Southern African organisations which form the core of our discussions and organisational efforts.

We are concerned with ensuring that the great victory achieved in June 2014 with the adoption of the United Nations Council on Human Rights Resolution establishing an Inter-governmental Working Group (IGWG) to develop a Binding Treaty, translates into real change on the ground. We note that the South African government was instrumental in the introduction and adoption of the resolution and have made efforts to consult with civil society on its further engagement on the matter.

We are encouraged by the government's position in this regard. However, we know that while the adoption of the resolution was a massive step in the right direction to ensure that corporations are held accountable for their violations of human rights, it was only a first step. The hard work and negotiation lies ahead.

From 6-9 July 2015, the Inter-Governmental Working Group (IGWIG) will meet to debate at least two of the key preliminary issues that will shape the development of the treaty – and potentially determine its eventual effectivity in protecting affected communities. Those two issues are the scope of the treaty and the participants in the development of the treaty.



South Africa is in a unique position to contribute meaningfully to these two debates. We have a long history of a high-impact extractives industry dominated by large domestic and transnational corporations. As a country, we have also endeavoured to learn as many lessons as possible from the tragic events of August 2012 in Marikana and to ensure that the circumstances that made such events possible, never arise again. It is fortuitous that the Farlam Commission of Enquiry into the Marikana tragedy was released just days before the first IGWG meeting in Geneva, which South Africa will chair.

One of the lessons that will be invaluable to influencing the scope of the treaty is that businesses cannot turn a blind eye to the right to development and the socio-economic conditions of the communities directly or indirectly affected by their operations – whether the local host communities or the migrant labour guest communities. We now know that it is an unsustainable situation. The Farlam Commission in fact found that Lonmin's failure to comply with their housing obligations contributed to the tragedy of the 12th of August 2012.¹

The way to address this issue through the treaty process must be to tease out the role of corporates operating in countries with challenges in realising the right to development and socio-economic rights of its citizens. Such input will be invaluable in ensuring that the scope of the binding treaty is not unnecessarily narrow.

As an Alliance, we are a collection of organisations and individuals with varying experience, skills and expertise ranging from local, academic and legal knowledge. But more importantly the Alliance includes community based organisations and activist civil society organisations working closely with affected communities which can legitimately give voice of communities often ignored in developing planning and policy formulation. We submit that our combined experience and insight will be invaluable to informing the South African government's position on these important issues and in providing much needed support during high-stake negotiations. In the same way, the inputs of civil society and affected communities world-wide will be invaluable to ensure the legitimacy and relevance of the IGWIG process.

In the circumstances, the Alliance implores the South African government to:

¹ The commission found that "Lonmin's failure to comply with its housing obligations [...] created an environment conducive to the creation of tension, labour unrest, disunity among its employees or other harmful conduct".

- Ensure that both its own process and the IGWIG process more broadly allows for and promotes the participation of civil society and affected communities in its broadest form;
- Ensure that the scope of the treaty includes human rights violations in the scope of first, second or third generation rights where relevant, in particular the clear role that TNCs play in promoting or hindering the right to development;
- Ensure that the mandate that the government takes to the meeting in Geneva next month and into the future is representative of the South African citizens who stand to be protected by the binding treaty.

We thank you for your attention on this important matter and look forward to hearing from you.

For more information please contact Hassen Lorgat (Benchmarks, hassenlorgat@yahoo.com) or Wilmien Wicomb (Legal Resources Centre, wilmien@lrc.org.za).

Sincerely,

Signatories:

Environmental Monitoring Group

Green Justice

groundWork

Institute for Economic Research on Innovation, Tshwane University of Technology

Justiça Ambiental, Maputo, Mozambique

Legal Resources Centre

Mining Affected Communities United in Action (MACUA)

People's Dialogue

Rural Women's Assembly (RWA)

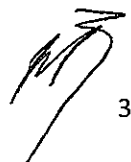
SATAWU

South Durban Community Environmental Alliance

Trust for Community Outreach and Education (TCOE)

WoMin

Zimbabwe Council of Churches



The Alliance liases with the international coalition, "Stop Corporate Power" and a number of the Alliance members are formal affiliates to the coalition.



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