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Statement on Africa's Legal Proposals and Recommendations on Articles 5, 7, and 8: Tenth Session of the Intergovernmental Working Group on the UN-Legally Binding Instrument Negotiations

16 December 2024, Geneva

My name is Obert Bore, a Zimbabwean national, and I am honored to deliver this statement on behalf :

ActionAid International, Pan African Lawyers Union, Centre for Democracy and Human Rights, FIDA-Uganda, Kenya Human Rights Commission, Uganda Consortium on Corporate Accountability, Franciscans International, Lusophone Platform on Human Rights, Network of African National Human Rights Institutions (NANHRI), and the Zimbabwe Environmental Law Association (ZELA).

Honourable Delegates,

We, the undersigned organizations, are pleased to present our views on Articles 5, 7, and 8 of the UN-Legally Binding Instrument (LBI), which are critical to holding transnational corporations (TNCs) accountable for human rights abuses and ensuring the protection of affected communities in Africa and globally. These provisions are central to the LBI's potential to reshape the corporate accountability landscape, especially for vulnerable communities in the Global South, who bear the brunt of corporate human rights abuses. Below, we outline our concerns with the current drafts and provide recommendations for strengthening these provisions.

Article 5: Protection of Affected Communities

Concern with Article 5:

Article 5 mandates states to protect victims of human rights abuses by adopting

precautionary measures when there is a serious risk of ongoing violations. However, the provision does not sufficiently address comprehensive emergency response mechanisms specific to disasters caused by TNCs or protections for affected communities while cases are pending.

Recommendations for Article 5:

- **Establish Comprehensive Emergency Response Mechanisms:** We propose a provision requiring states to implement emergency response systems specifically targeting disasters caused by TNCs, ensuring timely and effective interventions.
Proposed New Text: “State Parties shall ensure the establishment of comprehensive emergency response mechanisms specifically for addressing disasters caused by the actions of transnational corporations and other business enterprises of a transnational character.”
- **Legal Framework to Protect Affected Communities from Corporate Impunity:** States must be obligated to enforce legal frameworks that hold TNCs accountable for human rights abuses and actively protect vulnerable communities, particularly in Africa, where corporate abuses often go unchecked.
Proposed New Text: “State Parties must demonstrate their commitment to protecting communities from corporate impunity by enforcing legal frameworks that hold corporations accountable for human rights abuses.”
- **Amend Paragraph 5.4:** We propose amending paragraph 5.4 to ensure precautionary measures are available even before a case has been formally initiated.
Proposed New Text: “State Parties shall ensure that precautionary measures are available at the earliest stage, even before a case has been formally initiated.”
- **Propose Emergency Mechanisms in 5.5 or 5.4(a):** Additionally, we suggest placing the proposal on emergency mechanisms in paragraph 5.5 or potentially in 5.4(a). This adjustment should be reflected in the session to accommodate these revisions.

Article 7: Access to Remedy

Concern with Article 7:

Article 7 focuses on ensuring access to remedy for human rights violations involving TNCs, but lacks clarity regarding the enforcement of remedies, especially in cross-border cases. There are also gaps in ensuring the availability of legal support for

affected communities, which may prevent marginalized groups in Africa and other regions from seeking justice.

Recommendations for Article 7:

- **Ensure Enforcement of Foreign Judgments:** States should establish mechanisms to enforce foreign judgments, allowing affected communities to seek justice even when corporations operate in multiple jurisdictions. **Proposed New Text:** “State Parties shall provide effective mechanisms for the enforcement of remedies for human rights abuses, including through prompt execution of national or foreign judgments or awards, in accordance with the present Legally Binding Instrument and international legal obligations.”
- **Establish Effective Legal Support Mechanisms:** States must ensure that accessible and affordable legal assistance is available to affected communities, particularly in Africa, where marginalized populations are often unable to access justice due to financial and legal barriers. **Proposed New Text:** “State Parties shall establish accessible and effective legal support mechanisms for affected communities, ensuring that they can seek remedies without facing barriers due to lack of resources or legal complexity.”

Additionally, we propose amending paragraph 7.2(b) to state: "remove legal, practical, and financial barriers" rather than "progressively reduce."

Article 8: Legal Liability

Concern with Article 8:

Article 8 addresses the legal liability of TNCs for human rights violations, but the current draft omits critical provisions that hold companies accountable for failing to prevent human rights violations, even when due diligence is conducted. Without such provisions, the ability to effectively address ongoing abuses is severely undermined.

Recommendations for Article 8:

- **Reinstate the Duty of Prevention or Care:** We propose amending Article 8 to require companies to demonstrate proactive efforts in preventing abuses, ensuring that due diligence does not become a shield against responsibility. **Proposed New Text:** “State Parties shall ensure that companies have an ongoing responsibility to take all reasonable and necessary steps to prevent human rights abuses in their operations, including through proactive due diligence measures and ensuring that such measures are fully implemented.”

- **Reinstate Accountability Despite Due Diligence:** The treaty should explicitly hold companies accountable for abuses even when due diligence has been carried out, preventing due diligence from being used as a loophole to evade responsibility.

Proposed New Text: “State Parties shall ensure that companies remain accountable for human rights abuses even if they have conducted due diligence. Due diligence shall not serve as a defense or shield from liability for human rights violations that could have been prevented.”

Conclusion:

In conclusion, we emphasize the critical importance of these provisions in ensuring that Africa’s affected communities are not left behind. Across the continent, corporate impunity often leads to widespread human rights abuses, particularly in resource-rich countries where TNCs operate with little regard for local populations. Strengthening the protections for affected communities, ensuring access to effective remedies, and reinforcing corporate liability are not just legal imperatives—they are moral necessities to uphold justice and human rights in Africa and around the world.

We call on Africa’s state representatives to prioritize robust protections for affected communities and ensure that the treaty creates effective, binding mechanisms to hold transnational corporations accountable for human rights abuses. The outcomes of this session will have a profound impact on the future of human rights in Africa, and it is crucial that the voices of African states and civil society are heard clearly in these negotiations. We stand ready to collaborate with all stakeholders to strengthen these provisions and ensure that the LBI can fulfill its potential as a critical tool for human rights protection.

Thank you.