

Thank you.

As per our collective written statement by over 60 human rights organisations from across the world, ESCR-Net calls on the Intergovernmental Working Group to take the opportunity presented by this treaty to codify the recognition that all actors in society are capable of infringing directly upon the human rights of people everywhere, in particular the most powerful actors in today's society, transnational corporations and other business enterprises.

As such, the Treaty codify recognition contained in national, regional and international standards that corporations have legal responsibilities to respect human rights, and outline a framework for ensuring these legal responsibilities are observed in practice.

A number of constitutions recognise that non-State actors such as corporations bear direct responsibility in relation to human rights abuses, including those of South Africa and Kenya. Many laws across various jurisdictions impose direct legal responsibilities on corporate entities, particularly in relation to the national implementation of the Rome Statute, as well as other areas of law governing due diligence requirements and protection of the environment, among many other areas. In the African regional system, the 2014 *Protocol to the African Court of Justice and Human and Peoples' Rights* includes a section called 'Corporate Criminal Liability' which establishes jurisdiction for the court over the actions of legal persons, including corporations. We also echo calls of our many members calling for the treaty to all codify a conflict of interest provision, with direct legal liability for corporations where they fail to adhere to such a provision.

These are a just a selection of a wide variety of possible sources of law from which to draw on in developing further international standards. We therefore call on the Intergovernmental Working Group to standardize these legal requirements at the international level to form a clear set of international standards that acknowledge that corporations are legally bound to respect human rights and illustrate the means by which corporations can be held directly liable for their involvement in human rights abuses in all countries. Such useful standardization would provide both clarity and certainty for states, corporations and affected people.

While there are many different possible important elements that should be included into the treaty to operationalize such provisions, an important area to cover is the need for uniform mandatory human rights due diligence. While there are also many other elements from which to draw from, in this short intervention we would like to highlight one final key element for implementing these legal requirements – namely the process for how the treaty would guarantee access to accountability and remedy where corporations interfere with human rights.

In this regard, the treaty should establish a complementary international system of accountability to support the effective operation of national and regional systems. In particular, any set of legal responsibilities for corporations contained in the treaty must be enforceable by a complementary international system to investigate allegations of corporate infringement of human rights, and have authority to provide binding and enforceable findings for State and corporate actors involved. Such a mechanism would be most functional in circumstances where State remedies are unavailable or inadequate, after the exhaustion of domestic remedies.

Thank you very much for the opportunity to provide these inputs.