



## **Speaking Notes for Ambassador Abdul S Minty**

### **Permanent Representative to the United Nations in Geneva and All Other International Organisations in Switzerland**

#### **Side Event: Human Rights and Transnational Corporation: Paving the way for a legally binding instrument**

Let me express my sincere appreciation to Ecuador for co-sponsoring and organizing this important Event, which my Government views as a critical platform for sharing views on the need for a legally binding instrument on Transnational Corporations (TNCs) and Other Business Enterprises. Today we will continue the discussion on this issue. While there was support by panellists, namely the South Centre and the International Commission of Jurists (ICJ) and other delegates who took the floor, sentiments from business and other delegations pointed out the need to rather focus on the implementation of the Guiding Principles through National Action Plans, which they stated have thus far been successful to sensitize the business community to respect human rights. Furthermore there is a need to strengthen the role of State in terms of protection mechanisms. We also heard from the ILO on the relevance of the International Labour Organization (ILO) framework on this issue, and the need to work closer with the Organization in this regard.

Comments heard in support of a legally binding instrument included (a) the need to address challenges in cooperation between the host and home state to bring the TNCs to account, thus ensuring redress to the victims of human rights violations; (b) the current asymmetry in the international system with rights outweighing obligations

under Bilateral Investment Treaties and need to address these extra-territorial obligations in this regard; (c) strengthening of the Guiding Principles which is a base to work from; and (d) ensuring greater respect for human rights while at the same time balancing the positive role that FDI plays in many developing countries.

Allow me to also acknowledge the substantive contribution made by the Special Representative of the Secretary-General (SRSG), Prof John Ruggie, on this thematic issue. South Africa is fully supportive of the important work undertaken on the Guiding Principles. The provisions contained in the Guiding Principles are indeed positive. The challenge however is that they are essentially voluntary in nature. In response to this shortfall, there have been increasing calls for an international regulatory framework that would ensure accountability for violations of human rights by TNCs and Other Business Enterprises. Experience so far has clearly shown the need for a legally binding instrument, which is seen as a more progressive step in making a difference in closing the governance gap to ensure that the victims of corporate violations and abuse have adequate redress.

Notwithstanding the positive contribution that TNCs and Other Business Enterprises make towards poverty alleviation and development, through among others long term investment in productive activities with improved access to modern technology, skills development and international markets, the benefits are not always holistic.

As pointed out in one report of the Special Representative of the Secretary-General (Prof John Ruggie) , it is poor countries in our continent and those in conflict or emerging from conflict that are worst affected by violations of human rights by TNCs and Other Business Enterprises. We know of many cases on our continent where TNCs and Other Business Enterprises are doing business with no regard to basic standards of human rights and fundamental freedoms, including the right to development. The areas of concern include the use of child labour, failure to provide safe and healthy working conditions and general employee wellbeing (such as adequate housing and access to health services), the dumping of toxic wastes and environmental degradation.

These challenges correspond in large measure to current emerging thinking at the global level. Significantly a new generation of investment policies are emerging, with governments now placing the promotion, protection and fulfillment of human rights, inclusive growth and sustainable development at the centre of efforts to attract and

benefit from investment. This approach aims to achieve an appropriate balance between the rights and obligations of investors, the need to provide adequate protection to foreign investors, while most importantly ensuring that human rights obligations are upheld, and that governments retain the policy space to regulate in the public interest.

This is why in recent times the South African judicial system has been able to adjudicate successfully in a number of cases involving TNCs and other business enterprises whose actions have led to human rights violations.

It would therefore not be correct to continue to hold a view that political will remains the only factor attributable to the challenges on the States' duty to protect. In this regard, it is imperative to underline the inextricability with the other two pillars, namely Respect and Remedy. The success of the Framework cannot only lie in the State's duty to protect alone as there is a need to have a comprehensive and balanced manner of addressing the challenges of TNCs and Other Business Enterprises. This has to also be complemented by the sincere cooperation and willingness of the corporate sector (especially the TNCs) to adhere to the regulations and policies.

As a way forward, it is our principled view that on the issue of Business and Human Rights:

- The notion of voluntary corporate responsibility presents many challenges in contemporary international human rights law. Non-State Actors must be held accountable for their actions, especially when these actions result in human rights violations;
- This is why it is important for us to discuss developing an international regulatory framework in the form a legally binding instrument to regulate the activities of TNCs and to ensure universality of application of uniform standards, on a global scale; and
- The critical need to strengthen the role and capacity of regional mechanisms and institutions to be able to effectively deal with the corporate governance issues is also important.

Finally, it remains our collective responsibility to ensure that initiatives in this area of work provides for maximum protection of victims from the violation of human rights,

access and provision of adequate remedies for these victims, and the need to ensure that there is no impunity for TNCs which violate human rights.

On that note, allow me to introduce our speakers to continue this debate: First, Professor Errol Mendes Director of the Human Rights Research and Education Center at the University of Ottawa, Canada will present via Skype. Our next speakers are Mr. Michael Addo, Vice-President, Working Group on Business and Human Rights; Mr. Surya Deva Professor at the School of Law of City University of Hong Kong; Mr. Marcos Orellana, Director, Environmental Health Program Center for International Environmental Law (CIEL), Adjunct Professor, Washington College of Law and finally Mr. Cephias Lumina Independent Expert on foreign debt and human rights.