Several members of the African Coalition for Corporate Accountability (ACCA)\(^1\) have been involved in discussions around a treaty on business and human rights, as introduced by UN Human Rights Council resolution 26/9. While a number of meetings have taken place to discuss the process of elaborating such an instrument, the first convening of the open-ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises (IGWG) with respect to human rights was a significant landmark in the process. Only a small number of ACCA members were present at the first IGWG meeting, and the absence of civil society organisations (CSOs) from Africa in the process raises serious concerns for ACCA.

ACCA wants to emphasise the fact that a treaty on business and human rights should not be seen as an instrument that would exonerate governments from their human rights duties in the context of business. Government is the primary provider and protector of human rights, and should see the process around a treaty on business and human rights as an opportunity to also strengthen existing frameworks around business and human rights at the domestic level.

ACCA takes cognisance of the value of in-person meetings, and underscores the importance of contributions that such meetings bring in terms of knowledge-sharing and capacity building. There is a great need for in-person meetings in Africa around complex issues, such as those that have been raised in the treaty process. We are living in a time where adverse corporate activities affect Africa more often than not, and this further highlights the need for civil society in the region to have a strong and coordinated voice in this process.

ACCA encourages stakeholders in the treaty process, especially governments, to engage with civil society and/or to respond positively to requests for engagement from civil society groups in Africa. While coordination around the treaty process has been relatively lacking from within Africa, numerous CSOs have been engaging with governments on a regular basis around issues related to business and human rights, more specifically the United Nations Guiding Principles on Business and Human Rights. With this in mind, ACCA would like to build on the momentum already gained towards addressing issues around corporate human rights abuse on the continent. ACCA sees an important role for National Human Rights Institutions (NHRIs) to play in this context, which could be a valuable interlocutor in the process. A treaty should also seek to make provision for the pertinent

\(^1\) The African Coalition for Corporate Accountability (ACCA) is a coalition of 89 organisations from 28 African countries supporting communities and individuals whose human rights are adversely affected by the daily activities of corporations on the African continent.
commitments of businesses in terms of human rights within the different codes, obligations and voluntary initiatives.

In line with ACCA’s Action Plan, ACCA is delighted that community rights is being put forward as a key concern for African CSOs in the treaty process. In this vein, ACCA would like to highlight the following issues:

**Free Prior and Informed Consent (FPIC):**

- ACCA encourages further development of the discourse around FPIC in the African context in the treaty process;
- Requirements for continuous community engagement, participation, and consultation are crucial and should feature in the treaty; and
- The importance of access to information should be highlighted in the treaty, including the need for existing practices and frameworks around access to information to be evaluated in an attempt to align it with international best practice.

**Access to remedies:**

- ACCA notes with concern the little progress made on access to remedies for victims of corporate human rights abuse over the past few years;
- Barriers to access to remedy that should be clarified and addressed by a treaty on business and human rights include the high costs of accessing remedies and the limited scope of *locus standi* provisions in some domestic jurisdictions in Africa;
- The treaty should include a gendered element that provides for the challenges around gender equality in Africa and other culturally diverse environments;
- ACCA hopes to see extraterritoriality and extraterritorial obligations highlighted and clarified in a treaty on business and human rights; and
- The potential advantages of both judicial and non-judicial remedies should be explored in the context of setting up a treaty mechanism that would facilitate access to remedy.

ACCA encourages all stakeholders to engage in the process with a long term vision in mind – to think beyond the initial elaboration of the instrument, to stages of signing, ratification, and domestication of the treaty. ACCA views the treaty process as an opportunity for the international business and human rights community to shed light on complex and relatively vague issues such as the human rights roles and responsibilities in public-private-partnerships (PPPs), and in the context of state-owned-enterprises (SOEs).

ACCA commits itself to having a continuous internal dialogue surrounding both the treaty and the treaty process, while exploring different ways in which ACCA may better serve the movement.
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