**Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights**

**Fourth session (15-19 October 2018)**

**Item 4, Article 9: Prevention**

**Tuesday Afternoon: Item 4, Article 9: Prevention (AWID)**

Thank you Mr. Chairperson.

I speak on behalf of Association for Women’s Rights in Development (AWID) and the Feminist for a Binding Treaty group.

We welcome the “zero draft” and the emphasis on prevention. However the effective prevention of corporate human rights abuses absolutely depends on a gender justice approach, which acknowledges and seeks to address the different and unanticipated impacts of such abuses on women.

Patriarchy intersects with the oppressive neoliberal and neocolonial economic system to leverage and exploit women’s low status in society for profit, exacerbating existing structural inequalities. Women experience multiple and intersecting forms of discrimination based not only on their gender, but also on their race, class, ethnicity, religion and other social markers.

This is why article 9 should include the obligation as part of due diligence to carry out gender impact assessments. The need for gender integration in human rights impact assessments has been recognised by the CESCR, the UNWG on TNCs and OBEs and even in the new OECD Due Diligence Guidance for Responsible Business Conduct[[1]](#footnote-0). Gender Impact Assessments should be conducted with the meaningful participation and representation of women from all affected communities, and take into account impact of operations on gender-based discrimination, women’s health, gender-based and sexual violence, gendered division of labor and access to and control of social and economic resources, just to name a few. In this assessment, multiple and/or intersecting forms of discrimination should be addressed. Monitoring and reporting on the human rights impacts of business activities foreseen in article 9 should also include gender-disaggregated data, to identify any differential and/or disproportionate impacts on women, girls and other groups at risk of marginalization or vulnerability.

It is vital to safeguard such gender and human rights impact assessments from any conflict of interests and to protect their integrity from any business interference and profit-driven interests. Criteria regarding the appropriateness of the person(s) undertaking the assessments planned in article 9 should be measured against pre-established criteria, which should include as a minimum: independence; appropriate expertise; adequate funding; diversity including but not limited to gender balance; and engagement of affected communities.

As for prevention, women are not only affected by corporate abuses in gender specific ways but are also systematically excluded from decision-making and consultations. The patriarchy of the corporation, the state and the society collude in excluding and silencing women. This is why we welcome article 9 g) but call for stronger text to ensure that groups subject to multiple forms of discrimination such as indigenous and rural women are duly included in community consultations.

Article 9 does not include any measure regarding due diligence in the context of business activities in conflict-affected and high-risk areas, which is a major gap. The treaty should build on existing regulatory frameworks and provide the obligation of States to impose a heightened and mandatory due diligence obligation on businesses, operating or planning to operate in conflict-affected and high-risk areas[[2]](#footnote-1). Stringent human rights due diligence in these contexts, coupled with gender impact assessments and strict liability, are essential to prevent corporate abuses linked to conflict, particularly to women’s rights, such as sexual and gender-based violence.

1. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, paragraph 8, 23 June 2017, E/C.12/GC/24, available at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=en>; Human rights and transnational corporations and other business enterprises, Note by the Secretary-General, A/72/162, paragraphs 28-30, available at: <https://daccess-ods.un.org/TMP/3995596.17042542.html>; OECD (2018),OECD Due Diligence Guidance for Responsible Business Conduct, available at: https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf [↑](#footnote-ref-0)
2. OECD (2016), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264252479-en>; UN Doc. A/HRC/17/31, Guiding Principles on Business and Human Rights : Implementing the United Nations « Protect, Respect and Remedy » Framework, 21 March 2011, Guiding Principle 7, available at : <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>; REGULATION (EU) 2017/821 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2017:130:FULL&from=EN

; REGULATION (EU) No 995/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, available at: http://ec.europa.eu/environment/forests/timber\_regulation.htm

; Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 1502, available at:<https://www.sec.gov/about/laws/wallstreetreform-cpa.pdf> [↑](#footnote-ref-1)