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

***Fifth session (14-18 October 2019)***

***Article 3 Scope and Article 4 Rights of Victims***

I speak on behalf of the Association for Women’s Rights in Development and members[[1]](#footnote-1) of the Feminists4BindingTreaty. We welcome the expanded scope of application and the deletion of the reference to “profit-making” activities from the definition of business activities as it created uncertainty as to the coverage of certain activities such as that of State-owned enterprises. The Instrument should also clarify the specific human rights obligations of the State when it acts as an economic actor in the context of business activities. We will make comments in this regard in the discussion of article 5 Prevention.

With regard to article 4, we underline the importance that all justice systems, both formal and non-judicial. In recognizing historical and structural barriers to women’s access to justice, justice systems must be secure, affordable and physically accessible to women, and adapted and appropriate to needs of women, trans and gender non-conforming persons especially those facing multiple and/or intersecting forms of discrimination. In line with CEDAW’s General recommendation 33 on women’s access to justice, the gender guidance on the UNGPs, which was presented by the Working Group on business and human rights to the Human Rights Council in June 2019, also recommends that: “States should take proactive and targeted measures to reduce additional barriers that may be faced by women in holding businesses accountable for human rights abuses, for example a low level of literacy, limited economic resources, gender stereotyping, discriminatory laws, patriarchal cultural norms and household responsibilities.”[[2]](#footnote-2) In this regard, we recommend to specify in article 4.12 that States parties should provide accessible and gender-responsive legal assistance to victims in addition to effective legal assistance.

Remedies should be gender-transformative and participatory in their design in order to eliminate barriers to unequal gendered power relations that govern the context of corporate abuse, including women human rights defenders who often face gender-specific violence, stigma, reprisals and job insecurity for reporting business-related abuses.

In recognizing the central role of women human rights defenders to resist corporate abuse and impunity, we welcome the reference in Article 4(9) to States’ obligations to take effective measures to guarantee a safe and enabling environment for human rights defenders. For further clarity, we recommend that this provision be incorporated into Article 4(3) in order to better articulate the rights of human rights defenders with respect to access to justice.

Finally, provisions on access to justice in the Preamble and article 4 should also be aligned with the content of the rights as enshrined in international human rights law, including by referring to the rights to an effective remedy, to non-discrimination, to equality before the law and to a fair trial, as well as to relevant information concerning violations and reparation mechanisms.[[3]](#footnote-3)

1. ActionAid International, Anima Mundi Law Initiative, AWID (Association for Women’s Rights in Development), CaL (Coalition of African Lesbians), CAWEE (Center for Accelerated Women’s Empowerment), CELS (Centro de Estudios Legales y Sociales, Argentina), DAWN (Development Alternatives with Women for a New era), Federation of Women Lawyers (FIDA Kenya), FIAN International, FIDH, Franciscans International, Gender and Development Network, Manushya Foundation, NAPE (National Association of Professional Environmentalists), NAWAD (National Association for Women's Action in Development), PODER (Project on Organizing, Development, Education, and Research), SIHA Network - Strategic Initiative for Women in the Horn of Africa, Womankind Worldwide, WILPF - Women’s International League for Peace and Freedom [↑](#footnote-ref-1)
2. Gender dimensions of the Guiding Principles on Business and Human Rights, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/41/43, 23 May 2019, see Guiding Principle 26, available at: <https://www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx> [↑](#footnote-ref-2)
3. Article 8 Universal Declaration on Human Rights, International Covenant on Civil and Political Rights art. 2 (3); General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007; Principle 11, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International humanitarian Law, A/RES/60/147, 21 March 2006 [↑](#footnote-ref-3)