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

***Sixth session (26-30 October 2020)***

***Item 4: Article 8 Legal liability***

Thank you Mister Chairperson. This statement is read by the Women’s International League for Peace and Freedom on behalf of Feminists for a Binding Treaty.

Article 6.7 of the 2019 draft legally binding instrument[[1]](#footnote-1) listed several criminal offences for which States were to provide under their domestic legislation for criminal, civil, or administrative liability of legal and natural persons. We recommend that such a list of crimes be reintroduced in article 8.9, making clear that abuses and violations recognised as crimes under international law and for which international law requires the imposition of criminal sanctions be incorporated in national criminal law;  we, further,  recommend that such crimes should trigger criminal liability of legal persons.[[2]](#footnote-2)

We also recommend adding to this list of crimes “*attacks on human rights and environmental defenders*” and “*long term damage to the environment, which endangers peace or prevents the population from enjoying a healthy environment*”. The latter would be in line with recent developments related to the Draft principles on the protection of the environment in armed conflict, drafted by the International Law Commission, which foresee that States should take appropriate legislative and other measures aimed at ensuring that corporations and other business enterprises operating in or from their territories can be held liable for harm caused by them to the environment.[[3]](#footnote-3) It would also be consistent with growing demands to include environmental crimes to the list of international crimes and with the International Criminal Court’s approach to start focusing on crimes linked to environmental destruction, the illegal exploitation of natural resources and unlawful dispossession of land.[[4]](#footnote-4) Finally, we recommend adding in Article 8.9 after the term “*under international human rights law*”, references to international humanitarian law and international criminal Law.

We welcome the clarification in Article 8.8 that human rights due diligence shall not automatically absolve from liability a legal or natural person conducting business activities. Liability should be determined after an examination of the alleged human rights abuse, and it should not be limited to whether human rights due diligence procedure was complied with. We thus strongly recommend the deletion of the reference to the decision of courts on liability of businesses after an examination of compliance with applicable human rights due diligence standards. If not deleted, it must at the very least be qualified to clarify that due diligence is one factor among others to consider when determining liability for human rights abuses in the context of business activities. In that case, we would recommend  adding in the last sentence of article 8.8  “*among all other relevant considerations*” after “*human rights due diligence standards*”.

Thank you.

1. Article 6.7. Subject to their domestic law, State Parties shall ensure that their domestic legislation provides for criminal, civil, or administrative liability of legal persons for the following criminal offences: a. War crimes, crimes against humanity and genocide as defined in articles 6, 7 and 8 of the Rome Statute for the International Criminal Court; b. Torture, cruel, inhuman or degrading treatment, as defined in article 1 of the UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment; c. enforced disappearance, as defined in articles 7 and 25 of the International Convention for the Protection of All Persons from Enforced Disappearance; d. extrajudicial execution, as defined in Principle 1 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions; e. Forced labour as defined in article 2.1 of the ILO Forced Labour Convention 1930 and article 1 of the Abolition of Forced Labour Convention 1957; f. The use of child soldiers, as defined in article 3 of the Convention on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 1999 g. Forced eviction, as defined in the Basic Principles and Guidelines on Development based evictions and displacement; h. slavery and slavery-like offences; i. Forced displacement of people; j. Human trafficking, including sexual exploitation; k. Sexual and gender-based violence. [↑](#footnote-ref-1)
2. Integrating such a list of crimes under international law was also proposed by the International Commission of Jurists, see Proposals for Elements of a Legally Binding Instrument on Transnational Corporations and Other Business Enterprises October 2016, page 20, available at: <https://www.icj.org/wp-content/uploads/2016/10/Universal-OEWG-session-2-ICJ-submission-Advocacy-Analysis-brief-2016-ENG.pdf>; [↑](#footnote-ref-2)
3. Protection of the environment in relation to armed conflicts Text and titles of the draft principles provisionally adopted by the Drafting Committee on first reading, Draft principle 11 Corporate liability, A/CN.4/L.937, 6 June 2019, available at: https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/153/11/PDF/G1915311.pdf?OpenElement [↑](#footnote-ref-3)
4. Office of the Prosecutor, Policy paper on case selection and prioritisation, 15 September 2016, available at: <https://www.icc-cpi.int/itemsdocuments/20160915_otp-policy_case-selection_eng.pdf>; Report on the expert workshop on international criminal law and the protection of the environment, April 2020, paragraphs 7, 40, 41, available at: <https://law.ucla.edu/sites/default/files/PDFs/Academics/Report%20of%20the%20Expert%20Workshop%20%20ICL%20and%20environment%20v2.pdf>; <http://opiniojuris.org/2020/06/04/icl-and-environmental-protection-symposium-international-criminal-law-as-a-tool-for-corporate-responsibility-for-environmental-crimes-part-i/>; https://www.promisehumanrights.blog/blog/2020/4/international-criminal-law-and-climate-change [↑](#footnote-ref-4)