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 3. Scope and Article 4. Rights of victims*

Thank you, Mr. Chair. I speak on behalf of the “Feminists for a Binding Treaty” coalition.

**Under article 3**, our comments mainly pertain to article 3.3 regarding the phrase “internationally recognised human rights”, which is also used throughout the text, including in key definitions, such as the meaning of human rights abuse.

While we understand arguments made by certain delegations regarding legal certainty in favour of a more precise definition of human rights, we are concerned that certain human rights such as the right to water and sanitation recognised through General Assembly resolution 64/292, rights recognised under other UN Declarations relevant for the implementation of the treaty, such as the UN Declaration on the Rights of Indigenous Peoples, and any other human right that might be recognised in the future, could be excluded from the scope of the instrument through this phrase. We therefore suggest:

* After “fundamental freedoms”, adding the phrase *“understood, at a minimum, as those”,*
* Deleting the word “core”; and
* Deleting the word “treaty” and replacing it with *“instrument”*

This would allow for a non-exhaustive definition of “internationally recognised human rights” that recognises all sources of these obligations, the principle of non-retrogression, and recognition of human rights in the future. We also suggest using “universal human rights” rather than “internationally recognised human rights”.

In addition, as currently drafted, article 3.3 ties the phrase “internationally recognised human rights” to treaties and ILO conventions “to which a State is a party”. This could have the perverse effect of permitting businesses to base their human rights due diligence and human rights impact assessments on a different set of human rights standards and obligations from country to country. This would also be at odds with the UNGPs, which make clear that business’ responsibility to respect exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations. We thus suggest deleting the words ““to which a State is a party”.

**Under** a**rticle 4,** rights of victims, we suggest adding the term “violations” after “abuses” in articles 4.1 and 4.2.g. Reintroducing the notion of human rights violation in the text is essential with regard to the accountability of States when implementing their obligations under the treaty. This notion would also make clear that the instrument applies to violations committed by the State or its agents in the context of business activities.

At the beginning of article 4.1, we suggest adding the phrase “State Parties shall take all appropriate measures”.   This addition makes clear that the obligation to ensure victims’ enjoyment of all human rights and fundamental freedoms is a State obligation.

Thank you.