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 9. Adjudicative jurisdiction, Article 10. Statute of limitations, Article 11. Applicable law*

**WEDNESDAY 28 OCTOBER**

**AFTERNOON: Article 9. Adjudicative jurisdiction, Article 10. Statute of limitations, Article 11. Applicable law**

**NGO WITH ECOSOC STATUS REGISTERING AND DELIVERING THE STATEMENT: Ayushi Kalyan, FIAN International for the Feminists for a Binding Treaty**

Thank you Mister Chairperson. I speak on behalf of the Feminists for a Binding Treaty.

**Firstly, regarding Article 9 on adjudicative jurisdiction,** we strongly welcome the inclusion of the obligation of forum non conveniens in article 9.3 and of forum necessitatis in article 9.5. We also welcome the inclusion in art. 9.4 of the possibility for State parties’ courts to reunite claims that are closely connected. In order to reduce barriers to resources, mobility and language in regards to access to justice for victims, we suggest adding in article 9.1 that jurisdiction may vest in the courts of the State where a victim is domiciled.  This would read as “*d. the victim is domiciled”*:

**Secondly, on article 10 statute of limitations,** we support the revised text in art 10(1) on the statute of limitations and the removal of ‘human rights law and international humanitarian law’ therein. We find it imperative that statutes of limitation do not prevent prosecution and punishment of the most serious crimes of concern to the international community as laid out in international law more broadly. We suggest statute of limitations should not apply either to the list of international crimes we suggest reintroducing in article 8.9. This means adding at the end of Article 10 paragraph 1 after the terms *“as a whole”*, *“and at the very least the crimes listed in article 8.9”.*

We welcome the inclusion of “..or when the harm may be identifiable only after a long period of time” in Art 10(2) which now allows victims a reasonable period of time for the investigation and commencement of prosecution or other legal proceedings. We recommend adding in art 10(2) that such domestic statute of limitations applicable to civil claims or to violations that do not constitute the most serious crimes of concern to the international community, as a whole shall allow a reasonable and gender-responsive period of time for the investigation and commencement of prosecution or other legal proceedings.

We hence suggest adding “*gender-responsive*” in article 10 paragraph 2 after the word “*reasonable*”. This exception should also apply where the victim is delayed in commencing a proceeding in respect of the claim because of their age, physical, mental or psychological state (to support, in particular, justice for victims of sexual and gender-based violence, as well as children and persons with disability). We thus suggest adding at the end of article 10 paragraph 2 the language *“or where the victim is delayed in commencing a proceeding in respect of the claim because of their age, physical, mental or psychological condition”*.

**Thirdly, regarding article 11 on applicable law**, the revised draft rightfully removes the provision subjecting the choice of applicable law to domestic legislation. However, we believe the victim should also be able to request that matters of substance regarding human rights law be governed by the law of the State in which the victim is domiciled. We suggest adding this as a new article 11.2 (c) which would provide “c) the victim is domiciled.

Additionally, to ensure consistency we suggest aligning the language in article 11.2 with regard to the terms human rights abuse and violations. Therefore, we suggest addition of the term “violation” in article 11.2 and “abuses” in article 11.2 a) and b).

We also suggest to clarify that, should a conflict of laws arise from obligations of States under trade and investment agreements and their obligations under the treaty, the choice of applicable law shall be in accordance with article 14.5, which foresees that trade and investment agreements shall be interpreted and implemented in a manner that will not undermine or limit the capacity of States to fulfill their obligations under the treaty. This clarification can be added in a new article 11.3). This new article 11 paragraph 3 would read as follows: “*In the event of conflict of laws resulting from obligations of States under bilateral or multilateral trade and investment agreements and their obligations under this (Legally Binding Instrument , the choice of applicable law shall be in accordance with article 14.5 of this (Legally Binding Instrument)”*.

Thank you.