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: Preamble, Article 1. Definitions, Article 2. Statement of purpose*

I speak on behalf of the “Feminists for a Binding Treaty” coalition composed of 30 organisations around the world. Firstly, on the Preamble, we strongly welcome the recognition in paragraph 16 of the need for States and businesses to integrate a gender perspective in all their measures in line with relevant international standards.

To strengthen the overarching expectation that the instrument must be effective for women, other discriminated groups and affected communities, we recommend :

* In preambular paragraph 8, adding the word “*participatory*” after the word “*effective*” to clarify that access to justice and remedy must be participatory;
* In paragraph 10, stressing the obligation of States to guarantee human rights without discrimination on grounds that are prohibited by international human rights law, rather than on the limited grounds of the UN Charter currently listed in the text. Thus, we recommend deleting “*without distinction of race, sex, language or religion*” at the end of paragraph 10 and replacing it with  “*and stressing the obligation of States to guarantee human rights without discrimination on grounds that are prohibited by international human rights law*”;
* In paragraph 15, we recommend  adding the term “*and violations*” after abuses to clarify this applies also to violations by the State. We also recommend adding “*due to existing social, economic, political, geographical and other circumstances*” after “*persons in vulnerable situations*” to clarify these persons are not inherently vulnerable. At the end of paragraph 15, after “r*ights-holders*”, we recommend  adding “*as well as the need to ensure their meaningful engagement in all stages of decision-making processes about the effective regulation of business activities*”;
* In paragraph 16, we recommend moving to this paragraph the reference to the ILO Convention 190 concerning the elimination of violence and harassment in the world of work that is currently listed in paragraph 4 among declarations,  since the Convention is a legally-binding instrument.  We also recommend adding after “*international standards*”, the following: “*including to eliminate all forms of discrimination, redress historical and current disadvantage, address stereotypes and violence, transform biased institutional structures and practices, and facilitate social inclusion and political participation*.” This would clarify the aim of a gender perspective in line with the principle of substantive equality.

Secondly, the Preamble should also set out in a more balanced way the context and necessity for the development of the Legally Binding  Instrument. We recommend:

* Firstly, that a new paragraph 14 bis be inserted, which would read as follows: *“Deeply concerned that individuals and communities continue to face business-related human rights abuses and violations in all parts of the world, including as arising in connection with business-related environmental damage and as heightened in conflict-affected areas, including situations of occupation, and in certain operating contexts which pose risks of severe human rights impacts”*
* Secondly, we suggest deleting “*all*” in paragraph 12 to nuance the statement that all business enterprises have the capacity to foster the achievement of sustainable development. We also suggest adding “*human rights*” after “*labour rights*” as business activities can only be sustainable if compliant with human rights;
* Thirdly, in paragraph 20, we recommend  adding “*violations*” in addition to abuses, to clarify that the Instrument also applies to human rights violations by States in the context of business activities. I stress that it is our position that “violations” should  be added in all relevant provisions throughout the entire text.

We also welcome that the Preamble now expressly mentions the Declaration on Human Rights Defenders. We recommend adding at the end of paragraph 14 that “*States have the obligation to take all appropriate measures to ensure an enabling and safe environment for the exercise of such a role*”. We also suggest clarifying that human rights defenders have a “*positive, important and legitimate role in the promotion and protection of human rights and environmental standards impacted by business activities*” and to delete “*in preventing, mitigating and seeking effective remedy for business-related human rights abuses*”.  Prevention and mitigation of business-related human rights abuses and violations is the obligation of businesses and of the State.

In article 1, paragraph 1 defining victims, we recommend  adding “*or violation*” after “*human rights abuse*” and deleting the word “*immediate*” from “*immediate family members*” to ensure that those with familial bonds and/or in caregiving relationships with the direct victim are properly covered, including spouses, and civil partnerships that, while not legally recognized by some States, are protected under international human rights law.

In article 1 paragraph 2 defining business activities, we suggest deleting the term “*for profit*” to ensure that all business activities are covered as there are non-profit business activities in the context of which human rights violations and abuses can still occur. This would be in line with the approach set out in the UNGPs Reporting Framework and its implementation guidance, since  activities covered should be related to everything that is linked to the company’s products and services, including, for instance, government relations/lobbying and engagement with stakeholders.

In article 2 b), c), d) and e), we recommend adding the term “*violations*” to “*abuses*” in line with our general position on the text to clarify that the instrument also applies to violations committed by the State or its agents. We also suggest deleting “*responsibilities*” in article 2 a) and replacing it with “*obligations*”.

Thank you.