

Statement by: Association for Women's Rights in Development (AWID), Asia Pacific Forum on Women, Law and Development (APWLD), Center for International Environmental Law (CIEL), FIAN International, and Women's International League for Peace and Freedom (WILPF). Supported by the International Platform against Impunity

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

On subject 6: Access to justice, effective remedy and guarantees of non-repetition

We welcome Professor Deva's statement recalling the latest report by the Working Group on Business and Human Rights to the General Assembly that focuses on access to effective remedies ¹ and his recommendation of the need to similarly incorporate a gender approach in the legally binding instrument. Women's rights organizations worldwide stress how indispensable and urgent this approach is.

It is extensively documented that women often face additional barriers in gaining access to justice and remedy in general, and even more so in relation to corporate human rights abuses, especially since corporations often deliberately choose to do business in states with weak judiciaries and scant legal protections. Gendered power relations, discriminatory laws against women, economic marginalization of women, social stigma, religious values and cultural norms all reinforce this situation. Even where women have access to remedy in principle, lack of gender responsive approach in remedial mechanisms means that justice and compensation awarded may not reach women at all. These barriers are compounded by the multiple and/or intersecting forms of discrimination - such as institutional racism - experienced by women from marginalised groups. This is also recognized by human rights bodies.

All justice systems, both formal and quasi-judicial systems, should be safe, affordable, physically and linguistically accessible to women, and be adapted and appropriate to the needs of women including for those who face multiple and/or intersecting forms of discrimination, such as indigenous women or

¹ Human Rights and Transnational Corporations and other business enterprises, A/72/162, 18 July 2017, report by the Working Group on the issue of human rights and transnational corporations and other business enterprises.

² UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, paragraph 36, 19 October 2010, CEDAW/C/2010/47/GC.2, available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC2.pdf>. See also UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 34 on the rights of rural women, paragraph 13, 4 March 2016, CEDAW/C/GC/34, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf and UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, paragraphs 20 and 24 b), 14 July 2017, CEDAW/C/GC/35, available at:

migrant women. However this is far from current reality, and requires deliberate attention and action to ensure effective remedy

It is essential that the draft text under Section (6.) on access to justice of the Draft Elements be revised to put rights-holders at the centre of the justice and remedy mechanisms. Women should be consulted meaningfully in creating, designing, operating remedial mechanisms, such as through a meaningfully participatory action-research framework. Instead of being framed as vulnerable groups, there should be a clear recognition of the heightened risk of discrimination against certain groups, including women, and of the additional barriers they face in accessing remedies. There should also be a recommendation to States to take positive measures to ensure effective access to remedies, without discrimination, to women.

Section (6.) on access to justice should also clarify that in order to ensure effective access to remedies, rightsholders should incur no harm or fear of harm when accessing them. For this reason, under that section there should be stronger and clearer language about protection of rights holders adversely affected by business activities or those challenging corporate abuses, including human rights defenders and whistleblowers. Such measures should take into account the gender-specific risks entailed by specific groups of human rights defenders, such as women human rights defenders.

Finally, we stress that in order to remove obstacles to access to justice and effective remedies, including by women, the treaty must clearly define the extraterritorial dimension of states' obligations to ensure remedy for abuses and violations committed by businesses that occur outside their territories. Such a clarification would be consistent with the jurisprudence of the Committee on the Elimination of Discrimination Against Women.²

² UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, paragraph 36, 19 October 2010, CEDAW/C/2010/47/GC.2, available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC2.pdf>. See also UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 34 on the rights of rural women, paragraph 13, 4 March 2016, CEDAW/C/GC/34, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf and UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, paragraphs 20 and 24 b), 14 July 2017, CEDAW/C/GC/35, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf