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

***Fifth session (14-18 October 2019)***

***Preamble and Article 1 Definitions***

This statement is made on behalf of WomanKind Worldwide and of members[[1]](#footnote-1) of the #Feminists4bindingtreaty. A key UN declaration that is missing from those cited in the Preamble is the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (commonly known as the UN Declaration on Human Rights Defenders).[[2]](#footnote-2) The Preamble needs to recall this declaration too. It should also connect the role of human rights defenders with a corresponding State duty to take all appropriate measures to ensure an enabling and safe environment for the exercise of such role. Such duty is derived from the State’s prime obligation to protect all human rights, which includes guaranteeing the right of everyone, individually and in association with others, to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international level.[[3]](#footnote-3)

In line with other major human rights treaties, the Preamble should also set out in a more balanced way the context and necessity for the development of the Instrument, noting the global concern for the continuing business-related human rights violations and abuses, and human rights implications of business-related environmental damage. Similarly, the Preamble should recognise the need for an inclusive, integrated and gender-responsive approach to ensure robust regulation in practice.

With regard to definitions, we note that the use of the term “contractual relationships” in article 1.4 is too restrictive to define the parameters of effective human rights due diligence. The term “business relationships”[[4]](#footnote-4) would more accurately characterise the scope of human rights due diligence responsibilities as elaborated by Treaty Bodies, Special Procedures, and the UNGPs.[[5]](#footnote-5) Human rights due diligence should be required not only for the company’s own activities but also the activities of other entities “directly linked to its operations, product or services by its business relationships,” other entities over which it has influence (including subsidiaries), and the company’s business partners (including suppliers).[[6]](#footnote-6) Human rights due diligence also applies to activities beyond the first tier in the supply chain.[[7]](#footnote-7)

We welcome the deletion of the reference to “profit” making activities from the definition of business activities in article 1.3 since it created uncertainty as to the coverage of certain activities, such as those by State-owned enterprises, from the scope. To clarify the scope further, in line with the approach set out in the UNGP Reporting Framework and its implementation guidance, activities covered under the legally binding instrument should be related to everything linked to the company’s products and services including, for instance, government relations/lobbying and engagement with stakeholders.[[8]](#footnote-8)

1. ActionAid International, Anima Mundi Law Initiative, AWID (Association for Women’s Rights in Development), CaL (Coalition of African Lesbians), CAWEE (Center for Accelerated Women’s Empowerment), CELS (Centro de Estudios Legales y Sociales, Argentina), DAWN (Development Alternatives with Women for a New era), Federation of Women Lawyers (FIDA Kenya), FIAN International, FIDH, Franciscans International, Gender and Development Network, Manushya Foundation, NAPE (National Association of Professional Environmentalists), NAWAD (National Association for Women's Action in Development), PODER (Project on Organizing, Development, Education, and Research), SIHA Network - Strategic Initiative for Women in the Horn of Africa, Womankind Worldwide, WILPF - Women’s International League for Peace and Freedom [↑](#footnote-ref-1)
2. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx> [↑](#footnote-ref-2)
3. Human rights defenders, A/66/203, 28 July 2011, paras. 54-56, available at: <https://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/203> [↑](#footnote-ref-3)
4. Guiding Principles on Business and Human Rights, see Principle 17 a), available at: <https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf> [↑](#footnote-ref-4)
5. For instance, the Special Rapporteur on Contemporary Forms of Slavery recommended that: *"All businesses’ human rights policies and procedures and the systems to implement them should integrate measures reaching beyond the first tier in supply chains and include clear guidelines and indicators to assist those operating at the lower tiers and in the informal economy to identify human rights violations, including contemporary forms of slavery, and ensure compliance with international human rights standards"*, para. 69 c), A/HRC/30/35, 8 July 2015, available at: <https://undocs.org/A/HRC/30/35> [↑](#footnote-ref-5)
6. The Committee on Economic, Social and Cultural Rights in its General Comment No. 24 on business activities define the scope of human rights due diligence includes “*entities whose conduct those corporations may influence, such as subsidiaries (including all business entities in which they have invested, whether registered under the State party’s laws or under the laws of another State) or business partners (including suppliers, franchisees and subcontractors)*”; General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24, 10 August 2017, para. 33, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQcIMOuuG4TpS9jwIhCJcXiuZ1yrkMD%2FSj8YF%2BSXo4mYx7Y%2F3L3zvM2zSUbw6ujlnCawQrJx3hlK8Odka6DUwG3Y> [↑](#footnote-ref-6)
7. See e.g. A/HRC/30/35, para. 69 (c) *(“All businesses’ human rights policies and procedures and the systems to implement them should integrate measures reaching beyond the first tier in supply chains and include clear guidelines and indicators to assist those operating at the lower tiers and in the informal economy to identify human rights violations, including contemporary forms of slavery, and ensure compliance with international human rights standards.”)* [↑](#footnote-ref-7)
8. See definition of business activities, available at: <https://www.ungpreporting.org/resources/glossary/> [↑](#footnote-ref-8)