**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 5. Protection of victims, Article 6. Prevention, Article 7. Access to remedy**

Thank you Mister Chairperson. I speak on behalf of the Feminists for a Binding Treaty.[[1]](#footnote-1)

**Article 5: Protection of victims**

* **Regarding Article 5(2):** We recommend this be amended to provide explicitly that States Parties’ measures to guarantee a safe and enabling environment for human rights defenders be ‘gender-responsive’in addition to being adequate and effective. While women human rights defenders are exposed to similar risks as other defenders,  they also face additional gender-specific threats and violence[[2]](#footnote-2) and a higher risk of being subject to prejudice, exclusion, and stigma than their male counterparts[[3]](#footnote-3).

**Article 6: Prevention**

* **Regarding Article 6(2)(b):** We recommend amending this provision so that it  reads “Take appropriate measures to prevent identified potential human rights violations and abuses and mitigate effectively identified actual human rights violations and abuses, including in their business relationships.” This will make it clearer that potential human rights harms must be prevented rather than simply ‘mitigated.’

* **Regarding Article 6(3)(b):** We welcome the explicit requirement to integrate a gender perspective in human rights due diligence measures. To strengthen the effectiveness of this provision in practice, we recommend that this provision be amended to read: *“Explicitly integrating a gender perspective, with the leadership of and in meaningful consultation with potentially impacted women and women´s organizations, in all stages of human rights due diligence processes, to identify and address the differentiated and intersectional risks and impacts experienced by women and girls, including through the collection of data disaggregated by gender and other major variables relevant to the communities potentially affected by their operations”.*
* **Regarding Article 6(3)(c):** We recommend clarifying that meaningful consultations must take place ‘at all stages of human rights due diligence processes’, which will extend to the identification, assessment, prevention, mitigation, monitoring and communication stages of such processes.
* **Regarding Article 6 (3)(g)** on enhanced due diligence in conflict areas:  We recommend  adding language to clarify what enhanced due diligence should entail as a minimum. This means adding after the term “*due diligence measures*”, “*including conflict-sensitivity analysis, continuous monitoring, and suspension or termination of operations if necessary*”. In addition, enhanced due diligence in conflict areas should also aim at preventing violations of international humanitarian law; thus, we recommend adding “*violations of international humanitarian law*” after “*human rights abuses*.” Finally, while conflict is the most obvious trigger for enhanced due diligence, it should also apply in other high risk contexts. We thus recommend adding after the term “*occupation*” the following language “*and in other operating contexts which pose risks of severe human rights impacts*”, which is language used in the UN Guiding Principles on Business and Human Rights.
* **Regarding Article 6(5):** We recommend extending this provision to ensure the need for States to take steps to, firstly, ensure the meaningful and participatory engagement of all relevant stakeholders, including human rights and gender experts, in the development of relevant national measures. Secondly, the State should develop tools, guidance, education and training, and raise awareness, in accessible formats, to support business enterprises to fulfill  their obligations effectively and to enable affected communities to participate in all stages of human rights due diligence effectively . If requested by affected communities, financial support should also be granted by the State to enable them to conduct human rights impact assessments themselves.
* **We recommend  a new subparagraph 6.5 bis** providing that: *“States Parties shall take all necessary additional steps, including through human rights impact assessments and other measures, to respect and protect human rights in the context of business activities that the State Party is engaged in, supports, or shapes. This includes but is not limited to, State ownership or control in business activities, State engagement in business activities with companies or other States, including trade and investment agreements, State regulatory oversight, or political or financial support. State Parties shall refrain from adopting laws and policies that directly or indirectly result in violations of human rights protected under this (Legally Binding Instrument).”* We also recommend  adding in article 6.7 that State Parties’ obligations to act to protect their policies from the influence of commercial and other vested interests should also be expanded to the protection of the development of laws from corporate capture.
* Finally, in line with our general position, **we recommend adding the term “violations” to “abuses” in article 6.2.b), 6.2.c), 6.3.g).**

**Article 7: Access to remedy**

* **Regarding Article 7.1:** We recommend  adding the qualifier “if appropriate” after “and”. While state-based non-judicial mechanisms can play an important role in access to remedy, they  are not appropriate in all cases, including in criminal matters. This is the case, for example,  where they do not meet sufficient standards of independence or  where they cannot meet the needs and sufficiently safeguard the rights of the individuals and/or communities for whom those mechanisms are intended.

Thank you.

1. Statement read by Sostine Namanya of the National Association of Professional Environmentalists (NAPE) in Uganda [↑](#footnote-ref-1)
2. Situation of women human rights defenders, Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/40/60, 10 January 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/004/97/PDF/G1900497.pdf?OpenElement>; Report of the Special Rapporteur on the situation of human rights defenders, A/71/281, 3 August 2016,  para. 54, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/247/09/PDF/N1624709.pdf?OpenElement [↑](#footnote-ref-2)
3. https://www.ohchr.org/en/issues/women/wrgs/pages/hrdefenders.aspx [↑](#footnote-ref-3)