

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

Seventh session (25-29 October 2021)

Article 1: Definitions

Thank you, Mr. Chair. I speak on behalf of the “Feminists for a Binding Treaty” coalition.

First, in the definition of “victims”, we recommend removing the word “immediate” before “family members” and after “family members” adding “including civil partners”. After the term “suffered harm”, we recommend adding and I quote, “or are in imminent risk of irreparable harm, or substantial impairment”. Also, adding the term “or violation” in article 1.1 after the word “abuse” would also make clear that victims should also be protected from violations by the State or its agents.

Secondly and linked to the previous point, while recognising that the definition of “human rights abuse” seems somewhat broader with the deletion of the terms “committed by a business enterprise”, we suggest reintroducing the notion of human rights violation in the text, including in the Preamble where relevant (notably in PP13 and PP18). This is essential to make clear that the instrument applies to violations committed by the State or its agents in the context of business activities. This would also avoid creating confusion regarding the term “abuses” as it is normally understood under international human rights law to be committed by non-State actors, whereas violations are committed by States. In our view, the reference to State-owned enterprises should remain in the definition of business activities.

We are concerned with the proposals to remove the term “omissions” from the definition of “victim” and of “human rights abuse”. It is indeed now clear under international human rights law that State responsibility at the international level is engaged not only through acts, but also through omissions, and that failure to act to prevent, investigate or sanction certain human rights abuses committed by private actors can result in a finding that the State has failed in its international human rights obligations, particularly its obligation to protect human rights. We also recall that under the UNGPs, a business enterprise’s “activities” are understood to include both actions and omissions.

Finally, we support the reference to the right to a healthy environment in line with HRC Resolution 48/13, as well as because this right is recognised in many jurisdictions.

Thank you.

