

**Seventh Session of the Open-ended intergovernmental working group on
transnational corporations and other business enterprises
with respect to human rights
ORAL STATEMENT – ARTICLE 7**

On behalf of: CIDSE, CCFD-Terre Solidaire, Broederlijk Delen, CAFOD, Entraide et Fraternité, Fastenopfer, Focsiv, KOO, DKA Austria, Misereor, Maryknoll Office for Global Concerns, Trócaire, Alboan and Commission Justice & Paix Belgium.

28 October 2021

Mr. Chair,

The mark of good law is justice. Affected people and communities across the world, confronted with grave human rights and environmental abuses and violations from businesses need access to justice and remedy.

First, we support the proposal from Palestine to add a 7.1bis.

Then, we reiterate the need to explicitly mandate States to remove gender-specific barriers to justice, and we support Peru, Panama, South Africa, Palestine and Mexico on 7.3.b to “avoid gender and age stereotyping”. In that regard, we suggest the following amendment to Article 7.2:

Art 7.2 – *State Parties must review and repeal domestic legislation that is a barrier to eliminating gender discrimination and providing training and education programmes to prevent recurrences of abuses and changes in patriarchal attitudes.*

On Article 7.3, we support the reservation of Mexico and express our concern at the amendments suggested by the honorable delegations of Brazil, Pakistan and Egypt to undertake legal assistance “according to national legislation”. We want to stress that differences in different jurisdictions would create inequality and gaps for those seeking remedy and justice. Addressing such differences and ensuring access to justice for all victims, regardless of what jurisdiction they reside in, should be a key objective of this instrument.

On Art 7.4, the reference to “rules concerning allocation of costs” may be too narrow. In some cases, it may not be the rules themselves that become a barrier but their application or practice. We, therefore, suggest deleting the words “rules concerning”. The article which would then read:

Art 7.4 – *States Parties shall ensure that court fees and ~~rules concerning~~ allocation of legal costs do not place an unfair and unreasonable burden on victims or become a barrier to commencing proceedings (...).*

We welcome the explicit obligation for State Parties in **Art 7.5** to enact legislation to enable a reversal of the burden of proof regarding the establishment of the liability of companies. Contrary to what the distinguished delegate from Russia stated, the reversal of the burden of proof has no bearing on the presumption of innocence, and is an established principle, in appropriate cases, in many jurisdictions.

Given the significant imbalance in power, resources, and access to information that right-holders experience when suing corporations, the LBI should explicitly mandate for reversing the burden of proof, moving away from judges' discretion. We therefore suggest removing the mention “allowing judges”.

Art 7.5 – *States Parties shall enact or amend laws ~~allowing judge~~ to reverse the burden of proof in appropriate cases or enabling courts to reverse the burden of proof to fulfil the victims' right to access to remedy where consistent with international law and its domestic constitutional law.*

Thank you, Mr. Chair.