Article 9 – Second revised Draft

This intervention is on behalf of the ESCR-Net, which is a Network of more than 280 members from 75 countries.

Regarding article 9, I will like to emphasize that adjudicative jurisdictionissuesare crucial to guarantee an effective remedy for the victims. This article is especially important for this LBI to achieve its purposes. Since, denial of justice is the fundamental concern in which this LBI is founded.

The inclusion of forum non conveniens and forum necessitatis in article 7 is a great improvement. Also, this draft allows for Courts to bring together claims that are closely connected.

Both improvements are key to consolidate an effective international legal system in addressing human rights abuses or violations in the context of business activities.

Notwithstanding these progresses, we believe that the Draft can be further perfected in this regard.

A first element is that the home of the victims must be considered as one of the criteria in first paragraph of article 9. This was in the previous draft and its omission in the current one does not seem reasonable.

Likewise, the rules laid in the first paragraph shall be in accordance with the victim’s choice. They shall be in full stand to seek effective remedy in the most suitable forum, so to avert any case of denial of justice.

Among the criteria to determine where the legal or natural person conducting business is domiciled, it is important to include where its substantial assets are located. So that the Courts can effectively lift the corporate veil.

It is important also that this article shall be applicable to both civil and criminal proceedings. And we believe that it should include a rule to clarify that, when appropriate, this won’t preclude universal jurisdiction for international crimes.

Finally, in article 12, we believe that paragraph 10 should be removed. It provides for extensive authorizations for the States to refuse to cooperate.

Paragraph 9 already provides different grounds on which States may refuse to it. So, doesn’t seem reasonable to widen like this the States margins to refuse assistance and, in doing so, to thwart justice.

We encourage this Working Group to uphold the improvements and consensus reached. And to continue to strengthen the norms that provide for effective access to remedy for the victims of human rights abuses or violations in the context of business activities.