

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

Seventh session (25-29 October 2021)

Article 5 – Protection of Victims

Delivering the statement: Felipe Bley Folly

Thank you Mr. Chair. I speak on behalf of FIAN International and I would like to share the following suggestions for your consideration.

In order to ensure consistency in language with our comments on article 4 regarding the use of the word “victim”, it is proposed that article 5 be amended as follows:

“Article 5 – Protection **of affected individuals and communities**

*1. State Parties shall protect victims, **affected individuals and communities, ...***

*2. State Parties shall take adequate and effective measures to guarantee all rights of a safe and enabling environment for persons, groups and organizations that promote and defend human rights and the environment, so that they are able to exercise their human rights free from any threat, intimidation, violence or insecurity. **This obligation requires taking into account States Parties' international obligations in the field of human rights, their constitutional principles and the basic concepts of their legal systems.***

We apologize for not reacting in time regarding a proposal concerning article 4, but due to its relation to the current article, we would like to address it at this moment. In this sense, we defend the inclusion of collective actions - in some countries known as class actions -, as an appropriate legal measure to defend the rights of affected communities and individuals. This mechanism is already established in many legal orders around the world and could be included in this article, if not maintained in *article 4-2.d*. As known, many of the violations are collective and such measures might facilitate judicial procedures and the rights of affected communities.

Besides, we would like to reemphasize that assuming the U.S.' proposal would imply discarding all contributions that affected communities and their representatives have made during this process to overcome all the barriers regarding prevention, justice and effective remedy. Public International Law is prescriptive, and as stated by the Mr. Chair President on the first day, the objective of International Law is to implement and/or correct insufficient national law.

We would also like to oppose China's proposal to delete “prior” from *Art. 5.1*. It is important that affected communities and individuals are also protected *before* the proceedings, when they are most vulnerable to access justice. If they are not protected before, their access to seek access to effective, prompt and adequate remedy might be impeded.

Finally, we would also like to support Panama's comment on including ‘harassment’ and ‘reprisal’ in *Art 5.2*.

Thank you, Mr. President.