



FIAN
INTERNATIONAL

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

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Statement by FIAN International (ECOSOC status)

Read by: Stephan Backes (FIAN International)

Article 7 – Access to remedy

Thank you Mr Chair.

This statement is made on behalf of ESCR-Net and FIAN International.

We support Palestine's proposal on 7.1 which responds well to the lessons learnt according to our analysis of the draft in the light of the Brumadinho and Posco cases. Full participation of affected communities is key in the definition of remedies, especially in the case of large scale disasters.

We also support the proposal of Palestine on par. 7.2 on information for the reasons explained under article 4, just with adequate access to information affected communities will have effective access to justice and remedy, as recognized in a number of international standards, including in environmental international law.

We also support Peru's proposal on 7.3 b to include gender and age stereotyping, which contributes to intersectional discrimination and constitutes one of the main causes of non-compliance with the vast body of international human rights standards against discrimination.

The contribution of Palestine on the burden of proof makes the article clearer. This provision is one of the key elements required to ensure the equality of arms in the judicial process, in contexts in which frequently the power of the defendants, together with the lack of information of the affected communities fully hinders the effective defense of their rights. Russia's interpretation on **Article 7.5** does not merit acceptance. As already foreseen in different national legal systems, the reversal of the burden of proof is *part* of a fair trial, guaranteeing particularly the above-mentioned equality of arms in the judicial process and does not contradict the principle of presumption of innocence.

We welcome the inclusion of specific obstacles that women, vulnerable and marginalised people and groups face in accessing remedy in Art 7.1. We also welcome article **7.3 d) which requires States to remove legal barriers including the doctrine of *forum non conveniens* and would strongly recommend retaining Art 7.4** which ensures that court fees, and other legal costs do not place an unfair and unreasonable burden to victims.

I thank you Mr. Chair.