

Oral contribution on Access to Remedy during the 7th IGWG session in the UN Human Rights Council

By ActionAid Netherlands, Al-Haq, ECCJ, FIDH, SOMO, and WO=MEN

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Thank you, Mister Chair. I make this contribution on behalf of ActionAid Netherlands, Al-Haq, ECCJ, FIDH, SOMO, and WO=MEN.

We welcome the general direction in which the draft text has evolved.

With the aim of further clarification of the text, and to prevent misinterpretations and inconsistencies in the implementation of the instrument by the State Parties, we would like to suggest the following changes to article 7 on access to remedy:

- The wording in article 7.2 related to access to information should be strengthened in line with international human rights law, ensuring access of right-holders to adequate and complete information of business enterprises activities.
- Article 7.3 deals with adequate and effective legal assistance to victims. For the sake of clarity, we suggest that 7.3c and 7.3d be separated into different paragraphs as these do not relate to legal assistance.
- We support Palestine's proposal to remove the word "appropriate" from art. 7.3d.
- The right of victims to be guaranteed legal aid (as per article. 4.2f) implies an obligation to provide legal aid under article. 7. We suggest introducing a literal subparagraph under art. 7.3 reading 'guaranteeing legal aid relevant to pursue effective remedy by ensuring legal representation and access to the court system for victims unable to afford these costs.'
- Article 7.5 on the reversal of the burden requires further clarification. We propose deleting the reference "allowing judges" and "where consistent with international law and its domestic constitutional law".
- Additionally, we suggest to integrate the principle of the principle of dynamic burden of proof in line with the following wording:

"State Parties shall include the power for judges, ex officio or at the request of a party, to require proof of a certain fact to the party that is in a more favorable position to provide evidence or clarify the disputed facts. The party will be considered in a better position to prove by virtue of its proximity to or possession of the evidentiary material, of its technical knowledge of the circumstances, because it has directly intervened in the facts that gave rise to the litigation, or due to the state of defenselessness or incapacity in which the opposing party finds itself, among other similar circumstances."

Thank you, Mister Chair.

This oral statement was in part informed by an expert consultation participated in by academics, litigators, and civil society experts, held on 7 October 2021 at the Asser Institute in The Hague (The Netherlands).