

**7<sup>th</sup> Session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights**

**Statement on Article 7**  
**28 October 2021**

In general we want to come in support of this article which we think contain key elements that correspond to the objective and purpose of this LBI which is to improve access to justice and fill gaps that prevent victims to enjoy their right to an effective remedy including reparations.

On article 7.1, we welcome the inclusion of the mention taking into account the specific obstacles that some individuals and groups who are disadvantaged and marginalized. This is welcome and should be kept.

We find the proposed article 7.1 bis by Palestine interesting and relevant, as we know the realities lived by communities in cases of mining disasters among others. And how processes of reparations have been carried out without the participation of affected individuals and communities, through non public, non transparent processes and negotiations and bar any judicial civil proceedings for individual reparation.

As to article 7.2, we would like to refer to our comments of yesterday, based notably on the many instruments and jurisprudence among which article 19 ICCPR, and its General Comment 34, on article 4 and the right to information including the right to access information. Some of the important elements suggested by the delegation of Cameroon under article 4 and that pertain to access to justice could be possibly included here.

On article 7.3: We are concerned about the proposal by the distinguished delegate of Brazil, as supported by others, to make the provision dependent on national legislation as we know in particular legal aid within the broader legal assistance schemes, is extremely unequal among States and weak especially outside of the restricted criminal justice. The proposal would largely reduce the relevance of this sub-para. Emptying the sub para of its aimed incentive for all States to provide legal assistance would deprive the LBI of one important advance. And so, we very much welcome the delegations who expressed their reservation about the proposal by Brazil and supported the original language.

On article 7.5, we would like to reaffirm the importance of the provision allowing the reversal of the burden of proof in cases of business abuses of human rights. Such a provision is fundamental to avoid denial of justice, to protect general principles of law, the interest of justice and equality of arms. We thus consider the suggestion by Palestine interesting but would at a minimum be in favour of keeping the para as is in the third draft (against Russia and Brazil).

In that regard, I would like to recall that the possibility of the reversal of the burden of proof has been handled by many national, regional and international judicial bodies. They have found ways to ensure the compatibility with the presumption of innocence.

Notably by establishing criteria and safeguards among which such reversal should be “reasonable, necessary and proportionate in pursuit of a legitimate objective”. Such balancing between rights and limiting procedural and other rights is nothing new to courts.

Last but not least, I would like to recall precedent of the Escazu agreement article 8.3 (e) that stipulates that: States parties shall have “measures to facilitate the production of evidence of environmental damage, when appropriate and as applicable, such as the reversal of the burden of proof and the dynamic burden of proof”.

Thank you