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ART. 7 ACCESS TO REMEDY

Regarding art. 7, we suggest reformulating art. 7.4 as follow:

“States Parties shall ensure that court fees and rules concerning allocation of legal costs do not ~~place an unfair and unreasonable burden on victims or~~ become a barrier to commencing **and continuing** proceedings in accordance with this (Legally Binding Instrument) **by placing an unfair and unreasonable burden on victims** and that there is a provision for possible waiving of certain costs in suitable cases”.

To fulfill the victims’ right to access to legal remedy, it would be important to include a paragraph on the taking of evidence. As we know, very often, in proceedings relating to action for damages for business related violations, strict discovery rules can jeopardize access to justice and the right to a fair trial.

The evidence necessary to prove a claim for damages is often held exclusively by the opposing party or by third parties, and is not sufficiently known by, or accessible to, the claimant. In such circumstances, strict legal requirements for claimants to assert in detail all the facts of their case at the beginning of an action and to proffer precisely specified items of supporting evidence can unduly impede the effective exercise of the right to legal remedy.

For this reason, after art. 7.5 addressing the burden of proof, it would be very useful to include a new paragraph ensuring that “claimants are afforded the right to obtain the disclosure of evidence relevant to their claim, without it being necessary for them to specify individuals items of evidence”. Moreover, national courts should also be able to order third parties – including public authorities – to disclose relevant evidence which lies in their control”.

To ensure effective judicial protection for TNCs violations, the treaty should also ensure that state parties adopt appropriate measures to enable associations and other recognized organizations that defend human rights, the environment and the consumers to promote collective redress actions, including collective injunctions.