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Seventh session of the Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights

**Item 4: “Article 7 – Access to Remedy (Thursday AM)”
October 28, 2021**

- Thank you Chair
- We refer you again to and align with the substantive analysis and text proposals on Article 7 and on the full draft LBI, put forward jointly by the International Organization of Employers, Business at OECD and BusinessEurope in their joint submission.
- We join with the many states who have raised overarching and substantive concerns with article 7 today.
- In particular, regarding Article 7.2, which provides for “access to information,” we urge that the text comport with existing international obligations of various states. Any provision regarding access to remedy must also comply with privacy laws. Information subject to this clause must be narrowly defined and strictly applied to ensure that the data collected are directly relevant to proceedings and do not jeopardize commercial or other rights of the respondent.
- Regarding the doctrine of forum non conveniens, it is a common law legal doctrine and should be respected here. Rejecting this principle confusingly disregards the importance of an independent and competent judiciary, while creating enormous legal uncertainty, especially when considered in light of the ambiguous definition of “business relationships” that is currently proposed in this draft LBI. We recommend this provision be removed.



- As has been strongly argued by states in the room today and in previous years, we join them in raising strong concerns over the provisions laid out in Article 7.5. As written, Article 7.5 presents a violation of due process and subverts fundamental notions of fairness, thereby eroding trust in legal systems. Reversal of the burden of proof violates the fundamental principles of innocent until proven guilty. Therefore, Article 7.5 should thus be revised or it should be deleted.
- As we have emphasized in previous years, we again emphasize that we believe that the most effective and sustainable approach for advancing our shared goal for the meaningful realization of human rights around the world would be to especially focus our efforts on increasing State capacity, so that a rights holder in a country may bring a suit in the country where a harm occurred and have faith in their ability to obtain a fair and speedy trial and access to remedy.
- We simply cannot afford to ignore the State Duty under international human rights law to protect the human rights of individuals within their territory and/or jurisdiction.
- We note, for example and with regret that despite many States acceding to and ratifying human rights and ILO conventions, actual implementation remains a challenge.
- Meaningfully addressing this well documented challenge – together – must be our shared goal.
- Rule of law and good governance are foundational elements of this goal.
- The promulgation by governments of sound national laws that meet international standards, effective enforcement of those national laws, and standing up sufficiently-resourced adjudicative and investigative bodies, coupled with strong anti-corruption programs, are the best means for the protection of human rights and for achieving meaningful access to remedy.



- Thank you.