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

**Eighth session (24-28 October 2022)**

**Delivering the statement:**

**Article 7 – Access to Remedy**

Thank you, Mr. Chair, I speak on behalf of FIAN International.

Our comments are based on the third revised draft as the legitimate basis for negotiation. Regarding the article 7.1, the provision of the necessary competence in accordance with the LBI by the States Parties to their courts and State-based non-judicial mechanisms, as the remedies often are not provided adequately due to the courts’ lack of knowledge and considering the complexity of transnational corporation’s business relationship and operation. We also welcome the inclusion of specific obstacles that women, vulnerable and marginalized people, peasants and indigenous people and other groups face in accessing remedy in Art 7.1.

With regards to 7.4 we reaffirm as Palestine said, the importance to include the participation of the affected communities. As an example, the case of the condemnation of Total company in France for the oil spill on the Mediterranean sea, with the amount of damage to the environment and the community. In this case, the participation of civil society was central to the creation of a package of measures known as ERIKA TOTAL, also our legal analysis on the cases of POSCO- India Project and Brumadinho Dam disaster have shown the need to ensure effective and meaningful participation of affected communities in the determination of remedies, for them to be effective.

We defend retaining Art 7.4 which ensures that court fees, and other legal costs do not place an unfair and unreasonable burden to victims, ensuring the correction of power imbalances in the judicial process.The Interamerican Human Rights System foresees a legal assistance fund for victims.

With regard to article 7.4 we support the proposal of Mexico on the use of the Escazu Agreement on Access to Justice and recall that due process is a general principle of law recognized in state practice worldwide, from which rights to access to justice emanates, including the material guarantees needed for it.

With regard to article 7.5 we consider that the addition of consistency with both international law and domestic constitutional law has narrowed the scope of this provision and makes it ambiguous in application. We would therefore suggest deletion of “and its domestic constitutional law”.

I thank you Mr Chair