

ICJ comments on Article 7: Access to Remedy, 3rd Revised Draft with additions from Chair's informal suggestions- 8th session of the IGWG

The ICJ has made comments and proposals to the 3rd Revised draft at the 7th session of this Intergovernmental Working Group in 2021. Those comments and proposals are still valid.

The ICJ supports article 7.1. as it stands in the Third Draft. The ICJ reiterates that access to effective remedy is a universal right already recognized in international instruments. The inclusion of provisions to address some of the specific problems in the implementation of this right in the context of business activities and abuses, and the existing obstacles that victims face to find justice and reparation are a central contribution of the proposed treaty to international law.

In addition, ICJ considers that the Chairperson's informal suggestions on Article 7 contain a more systematic and clear way to address some of the problems in this article. Therefore, it is suggested that these proposals under Article 7 are merged into the current text in the Third Draft, but eliminating or replacing the ambiguous or vague terms as follows.

In 7.1. the phrase "consistent with its domestic legal and domestic systems", by subjecting compliance with the treaty obligations to national law undermines the substance of the obligation. As such it should be deleted wherever it appears.

The reference to "relevant State agencies" in 7.1.a and other paragraphs should be replaced by "courts or tribunals" to be consistent with existing international standards on the rights of victims. The expression "relevant State agencies" is also vague as it makes reference to a large plurality of agencies, adding unclarity to the obligations under the treaty.

In 7.1.b. the word "progressively" should be removed because it unjustifiably reduces the value and reach of the obligation

In 7.3.f. the word "collective or" should be added before "possibility of group actions".

To finish, the ICJ stresses that the need for consensus and flexibility for national implementation of obligations cannot be obtained by sacrificing needed clarity and strength of the obligation, especially in this crucial subject.