FIRST INTERSESSIONAL THEMATIC CONSULTATION TOWARDS THE 11TH SESSION OF THE OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH RESPECT TO HUMAN RIGHTS (OEIGWG – HRC Res. 26/9)

NON-PAPER ON ARTICLE 4, 5 AND 7 OF THE UPDATED DRAFT LEGALLY BINDING INSTRUMENT

This non-paper addresses the core elements of articles 4 (rights of victims), 5 (protection of victims) and 7 (access to remedy) of the updated draft legally binding instrument, which is the first cluster selected to be discussed during the first thematic consultation for the implementation of HRC Decision 56/116 in 2025. This non-paper is based on the concrete comments and proposals presented by States and non-State stakeholders during the 10th session of the OEIGWG, including the areas of divergence.

This non-paper has been prepared jointly between the Chair-Rapporteur and OEIGWG's legal experts, and is thus presented by the Chair under his sole responsibility. This document doesn´t have any legal status, nor does it replace the "Updated draft legally binding instrument with the textual proposals submitted by States during the 9th and 10th session" as the basis for the negotiations. This non-paper is only conceived as "food for thought" to trigger focused discussions during the intersessional thematic consultations, and allow a better understanding of the implications of diverse options identified during the 10th and former sessions.

ARTICLE 4 – RIGHTS OF VICTIMS

1. OBJECTIVE OF THE ARTICLE AND OVERVIEW OF CORE ELEMENTS

Objective: In his introduction of article 4 during the 10th session of the OEIGWG, the Chairperson-Rapporteur highlighted that the Updated Draft maintains the essential elements present in the Third Revised Draft, focused on ensuring the rights of victims of human rights abuses in the context of business activities. These rights include, *inter alia*, the protection of the rights to life, to personal integrity, to freedom of opinion and expression, the right to submit claims to courts and non-judicial grievance mechanisms, the right to an effective remedy and to reparation, as well as protection from intimidation, reprisals or re-victimization in the context of such efforts. In light of certain comments from previous sessions, the Updated Draft has included two new subparagraphs in article 4.2, focused on accessibility of information, and on ensuring participation, transparency and independence in processes to obtain remedy, while considering the differentiated impacts of human rights abuses on specific groups. Another addition refers to the right of victims to request interim or provisional measures pending the resolution of a case.

Core elements:

(1) Enjoyment by victims of all internationally recognized human rights.
(2) Identification of different rights to which victims are entitled.
(3) No derogation from higher international, regional or national legal standards.
(4) Right of victims to request precautionary measures.

2. OVERVIEW OF MAIN PROPOSALS

Several elements under Article 4 overlap with elements under Articles 5 and 7. States may wish to consider this overlap, while noting that Article 4 is designed to clarify the rights of victims while Articles 5 and 7 are designed to clarify the related duties of States.

Throughout their interventions on article 4, States made references to elements that are also addressed in articles 1 (definitions), 3 (scope) or 16 (implementation), including in relation to the use of the terms "rights holders", "victims, affected persons and communities", "human rights abuses and/or violations" (such as under 4.1, 4.2, 4.2.(g), and 4.4), attention and responsiveness to gender, age, and disability, special attention to conflict affected areas and specific groups and

communities. Any choice or decision made concerning terminology in those articles would be applicable to the rest of the text. States may also wish to discuss these issues as cross-cutting issues with a view to ensuring coherence across the text.

Numerous proposals to add qualifiers were also introduced regarding different paragraphs of article 4. Besides, several interventions introduced new elements to the draft legally binding instrument that would have different legal implications. Among them, the following were raised in the discussion during the 10th session.

Regarding article 4.1:
- Addition of a reference to the application of this paragraph in line with international law, using different formulations (either in conformity with existing international obligations, or recognized by international law).
- Addition of a reference to the adoption of legislative or other measures in domestic law in accordance with international law to ensure the protection of victims.
- Request for the elimination of the reference to “internationally recognized” rights.

Regarding article 4.2 (chapeau):
- Proposal to delete article 4.2 in its entirety.
- Addition of a reference to the conformity with international law of this article.

Regarding 4.2.(a):
- Addition of a reference to the differentiated approach to persons in conflict areas.

Regarding 4.2.(b):
- Proposal to remove reference to certain rights, and to include a reference to the enjoyment of rights in line with the laws and values recognized within the State.

Regarding 4.2.(c):
- Introduction of examples of forms of reparation, including the “long-term monitoring of such remedies”.
- Proposal to keep references to the “right to access to justice and remedy” only, while removing the remaining characteristics.
- Inclusion of references to “judicial and non-judicial mechanisms”.
- Proposal to remove the term “reparation”, adding a reference to “full” reparation, or introducing “reinstatement” as a form of reparation.

Regarding 4.2.(d):
- Addition of a reference that the use of non-judicial grievance mechanisms shall not limit access to judicial mechanisms.
- Removal of references to the submission of claims “by a representative class action in appropriate cases”, or adding a reference to the submission of such claims (by a representative or through class action) where appropriate.
- Removal of reference to “grievance” from “non-judicial mechanisms”.

Regarding 4.2.(e):
- Removal of references to protection against unlawful interference “before” the institution of proceedings.
- Substitution of references to “protection from any unlawful interference” to a guarantee of the right to privacy and protection from intimidation and reprisals.
- Merging article 4.2.(e) with article 5.1.

Regarding 4.2.(f): Addition of examples of elements regarding which victims should be guaranteed access to information, or where unavailable, a rebuttable judicial presumption of control by controlling or parent companies, for the purpose of determination of liability.

Regarding 4.2.(g):
- Addition of a provision referring to the guarantee of "access to independent technical advisory mechanisms to facilitate access to impartial evidence regarding the harm or risk of harm caused by companies".

Regarding article 4.3:
- Interaction between article 4.3 and article 14.3.

Regarding article 4.4:
- Proposal to merge article 4.4 with article 5.4, adding a reference to the State duty to act *ex officio* or on request of victims.
- Suggestion to move provision to article 6.
- Proposal to limit precautionary measures to situations that present a serious risk of "irreparable" human rights abuse.

3. POTENTIAL IMPLICATIONS OF MAIN PROPOSALS

Regarding article 4.1:

On adding a reference to the adoption of legislative or other measures in domestic law in accordance with international law to ensure the protection of victims:
Article 16.1 of the draft LBI already contains a general reference to the duty of State parties to adopt all necessary legislative, administrative or other measures to give effect to the LBI; States may wish to consider if it is necessary to reiterate such duties in relation to separate provisions.

On eliminating the reference to "internationally recognized" rights:
Legal obligations of States under international law are rooted in treaties to which States are parties to, as well as in customary international law. As a result, States must adopt measures in their domestic law that are consistent with their international legal obligations, in order to give effect to such duties. In some instances, domestic law can also create human rights duties for States that go beyond international human rights standards, either in their specificity or in their scope.

Furthermore, the UN Guiding Principles on Business and Human Rights (UNGPs) stipulate that the responsibility of businesses to respect human rights refers to all internationally recognized human rights, and that such responsibility to respect is distinct from issues of legal liability and enforcement, which are largely defined by national law provisions. Thus, States may wish to consider whether removing such a reference would clarify (or not) the scope of rights that ought to be generally protected, included in the context of business activities.

Regarding article 4.2 (chapeau):

On deletion of article 4.2 in its entirety:
While the rights addressed under this article are firmly enshrined in international human rights law and might overlap with existing norms, they would add value by offering precision and clarity in relation to the procedural rights of victims of human rights abuse or violation in the context of business activities.

It is important to capture the essence of the procedural rights available to victims of business-related human rights violations or abuses, especially as those are fundamental to effective access to justice. In doing so, this article could help enhance the responsiveness to the vulnerability of the victims in such cases (such as 4.2.(e), (g)) and to address issues inherent in cases of business-related human rights abuses and violations (such as 4.2.(c), (d), (f)). It could also provide clarity for victims and for States and their relevant agencies in developing legislation and other measures, and in the implementation of victim-oriented policies and programmes.

At the same time, to a certain extent articles 4 and 7 overlap. Article 4 is focused on clarifying the rights of victims while article 7 focuses on the clarification of related State duties. States may wish to review the articles with a view to diminish overlap and ensure coherence in the qualifiers/standards utilized across the text.

Regarding 4.2.(a):

On adding a reference to the differentiated approach to persons in conflict areas:
This proposal aligns with the specific attention that is given to conflict-affected areas, including under the UNGPs and other instruments. The UNGPs confirm the need for recognizing the need for businesses to engage in heightened human rights due diligence that addresses the conflict context alongside regular human rights due diligence.

Regarding 4.2.(b):

On the proposal to remove reference to certain rights, and to include a reference to the enjoyment of rights in line with the laws and values recognized within the State:
The referenced rights are core to the Universal Declaration of Human Rights, and they are essential elements in many other international and regional treaties and conventions. States may wish to clarify the reason for the suggested removal of references to certain rights and consider rephrasing article 4.2 in a way that clearly refers to guarantees of the rights enshrined under the UDHR and other relevant treaties and conventions.

Regarding 4.2.(c):

On the introduction of examples of forms of reparation, including the "long-term monitoring of such remedies":
The examples provided in the proposal can generally be considered as examples of the different forms of reparation provided for by international human rights law, including the Basic Principles and Guidelines on the Right to a Remedy and Reparation. In addition, regional human rights case law awarding rehabilitation measures generally recognize a continuous duty of States to ensure their provision. Thus, States may wish to consider if adding specific examples would be necessary, considering existing reference to the different forms of reparation.

On the proposal to keep references to the "right to access to justice and remedy" only, while removing the remaining characteristics in the original draft:
The qualifiers used under proposed draft Article 4.2(c) align with the standards reflected under multiple international human rights instruments, including the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation and other key instruments, including the UN Guiding Principles on Business and Human Rights. The wording of this article could be revised for more clarity, particularly by rethinking the lineup of references concerning access to justice, remedy, and reparations.

On the inclusion of references to "judicial and non-judicial mechanisms":
In relation to the reference to judicial and non-judicial mechanisms, the ICCPR refers to "competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State", while the UNGPs refer to "judicial, administrative, legislative or other appropriate means". A similar formula may be appropriate, as they are general enough to accommodate different legal systems.

On the proposals to remove the term "reparation", adding a reference to "full" reparation, or introducing "reinstatement" as a form of reparation:
According to the Basic Principles and Guidelines on the Right to a Remedy and Reparation, victims are entitled to several forms of reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Depending on the circumstances of

each case, and depending on the gravity of the violation, victims should be provided with “full” reparation, which would include all of the different forms previously mentioned.

Furthermore, the term “reinstatement” is mainly used in reference to employment related cases, and overlaps with the term “restitution”, as it would imply restoring the victim to the original situation before the violation occurred. The Basic Principles and Guidelines explicitly mention “restoration of employment” as a form of restitution.

Regarding 4.2.(d):

On the addition of a reference that the use of non-judicial grievance mechanisms shall not limit access to judicial mechanisms:
Draft article 4.2(d) addresses State mechanisms, both judicial and non-judicial. The language guarantees the right of victims to submit claims to either. It implicitly reflects the principle that submitting a claim to one shall not infringe on the right to submit a claim to another.

It is underlined by the UNGPs and OHCHR’s Accountability and Remedy Project (ARP) that State-based non-judicial mechanisms (and their respective processes or procedures) do not prevent or limit access by rights holders or their representatives to judicial mechanisms in such cases. Yet, the ARP report referenced here highlights the need “for States to anticipate and make appropriate provision for overlapping proceedings in the procedural rules of both judicial mechanisms and State-based non-judicial mechanisms in line with standards of fairness, predictability, rights compatibility and transparency”.

The language proposed in relation to non-exclusivity between judicial and non-judicial mechanisms aligns with the rest of the language by stating what is implicitly captured by the draft article and with the points raised under the UNGPs and the ARP with regard to the interaction between State-based judicial and non-judicial grievance mechanisms.

On removing references to the submission of claims “by a representative class action in appropriate cases”, or adding a reference to the submission of such claims (by a representative or through class action) where appropriate:
The proposed draft article reflects the importance of class action or group claims. In terms of access to justice, the availability of class/group actions is important because it reduces the cost and therefore improves the financial viability and incentive for lawyers to provide legal representation to victims. It also is an important process for addressing remedy situations of mass claims arising from large scale disasters. States may wish to consider language that captures the difference in approaches, requirements and limitations that might be applied by different jurisdictions.

States may also wish to consider that article 7 refers to “group actions”. While the two expressions are often used interchangeably, “group actions” are usually used with reference to 'opt-in' class actions, where class actions can be 'opt-in' or 'opt out'. For the purpose of consistency, States may wish to use one term throughout the text.

On removing references to “grievance” from “non-judicial mechanisms”:
According to the UNGPs, the term “grievance mechanism” is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought. Thus, non-judicial mechanisms are generally understood to be covered by the broad reference to grievance mechanisms. The proposed article 4.2(d) addresses State-based mechanisms and does not address non-State-based mechanisms.

Proposed article 4.2(d) addresses the right to submit claims in respect to a certain harm or injustice. The reference to non-judicial grievance mechanisms seems adequate, as it encompasses mechanisms besides courts that could accept, investigate and attempt to resolve

complaints of human rights violations and abuses, such as national human rights institutions, National Contact Points, labour inspectorates, employment tribunals, consumer protection bodies, environmental tribunals, privacy and data protection bodies, public health and safety bodies, or professional standards bodies.

Reference to grievance mechanisms appear under draft article 4.2 (d) and once under draft article 13.2. However, for the purpose of clarity and consistency, and as expressed in other proposals throughout the text, States may wish to consider using a general formula that covers both judicial and non-judicial mechanisms.

Regarding 4.2.(e):

On removing references to protection against unlawful interference "before" the institution of proceedings:

The right of any person to be protected from reprisals and intimidations ought not be limited to the period after the institution of proceedings. The Basic Principles and Guidelines recognize the protection of victims and their representatives "before, during and after judicial, administrative, or other proceedings that affect the interests of victims". States may wish to consider whether this provision is specifically formulated to address protection of specific rights in the context of proceedings that have been initiated. Reference can also be made to the commentary under article 5.1, considering that protection against unlawful interference prior to the institution of proceedings should be considered as part of the general duty of States to protect human rights.

On substituting references to "protection from any unlawful interference" to a guarantee of the right to privacy and protection from intimidation and reprisals:

The proposal to change the reference in draft article 4.2(e) from protection against unlawful interference to a guarantee of the right to privacy would imply that the State should adopt wider measures to ensure the exercise of the right to privacy, and would avoid the need to define what qualifies as an 'unlawful interference', which could be differently interpreted in different jurisdictions. The focus on protection from intimidation and reprisals would thus be specifically directed at two types of conduct that have been acknowledged as recurrent practices in connection to human rights abuses and violations.

On merging article 4.2.(e) with article 5.1:

Both articles 4.2.(e). and 5.1 address the question of protection against unlawful interference with human rights before/prior, during and after any proceedings for access to remedy have been instituted, and from re-victimization in the course of such proceedings. Differences exist in relation to the human rights covered, with article 4.2.(e) focusing on the right to privacy exclusively, and specifying that in addition to unlawful interference, intimidation and reprisals should also be covered. It also introduces a reference to appropriate protective and support services that are gender and age responsive.

Considering that the focus of both articles is generally the same (protection against unlawful interference before, during and after proceedings for access to remedy have been instituted, as well as from re-victimization), merging both articles into one single provision would not imply a reduction in the level of protection stipulated by the provision. However, States may wish to consider if it is preferable to frame it as a right for victims, or if it is to be considered a State obligation vis-à-vis victims, their representatives, families, and witnesses.

Regarding 4.2.(f):

On adding examples of elements regarding which victims should be guaranteed access to information, or where unavailable, a rebuttable judicial presumption of control by controlling or parent companies, for the purpose of determination of liability:

Access to information is essential for access to an effective remedy; it is also paramount for the assessment of the liability of a specific entity within a corporate group, since it depends on

disclosure of internal corporate documents that are not publicly accessible. States may wish to consider if it would be of added value to clarify the kind of information that would fall under the provision on the right of victims to access information, such as through indicative references, while considering matters concerning privacy and the possibility of judicial control over requests for disclosure of information.

Rebuttable presumptions of control are integrated into a variety of legal instruments (including tort law, criminal law, environmental law, etc.), justified by multiple factors such as information asymmetry between the parties, and enhancing efficiency by placing the burden of proof on the party with better access to relevant information concerning the control relationship.

While article 4 is focused on the general rights of victims to access to information, article 7 addresses access to information in relation to access to remedy. Article 7.4(d) refers to reversal of the burden of proof and dynamic burden of proof. States may wish to consider whether addressing rebuttable presumptions of control/reversal of burden of proof might be better placed under article 7, as well as if the provision in article 7.4.(d) already fulfills that function.

Regarding 4.2.(g):

On adding a provision referring to the guarantee of "access to independent technical advisory mechanisms to facilitate access to impartial evidence regarding the harm or risk of harm caused by companies":
The proposed provision tackles access to specific kinds of information. It interacts with provision 4.2.(f) on access to information. States may wish to consider merging the two, considering both concern access to information and scope of the information addressed.

Regarding article 4.3:

While no proposals were submitted in relation to this provision, draft article 4.3 overlaps with draft article 14.3. States may wish to consider clarifying the interaction between the two.

Regarding article 4.4:

On merging article 4.4 with article 5.4, adding a reference to the State duty to act *ex officio* or on request of victims:
Articles 4.4 and 5.4 address the same issue, although 4.4 is drafted as a right for victims, while 5.4 is drafted as an obligation on States. The two articles could be merged together without losing elements currently referenced in both articles, if the language incorporates that the obligation of the State could be explicitly triggered by victims' request (as suggested under draft article 5.4).

On the suggestion to move provision to article 6:
Considering article 6 refers to measures of prevention that must be developed in domestic law concerning human rights due diligence, States may wish to consider if the possibility of requesting precautionary measures would be better placed in article 4, article 5 or article 7.

On the proposal to limit precautionary measures to situations that present a serious risk of "irreparable" human rights abuse:
As expressed by the Group of Legal Experts during the 10th session, the concept of urgent actions relates to the irreparable nature of harm and the gravity of harm that individuals or communities may face, which leads to their need to seek relief on an expedited basis. Thus, two categories of risks may require such measures: risks of irreparable harm, and risk of serious harms. The proposal to compound both qualifiers by using "serious risk of irreparable harm" could mean that the test to trigger the obligations to undertake precautionary measures becomes much higher to meet, which would limit the number of situations that would merit such precautionary measures, despite the potential risk of irreparable or serious harm. The potential risk of such

harm does not need to be high, but rather reasonably foreseeable, or plausible. States may wish to consider reviewing the formulation and refer to the reference in article 5.4.

ARTICLE 5 - PROTECTION OF VICTIMS

1. OBJECTIVE OF THE ARTICLE AND OVERVIEW OF CORE ELEMENTS

Objective: In his introduction of article 5 during the 10th session OEIGWG, the Chairperson-Rapporteur highlighted that the Updated Draft maintains most provisions present in the Third Revised Draft, detailing the obligations that State Parties of the future instrument will have to protect victims, their representatives, families and witnesses, prior, during and after instituting procedures to obtain remedy. Furthermore, the Updated Draft refers to the obligation to adopt measures that create a safe environment for human rights and environmental defenders, and article 5.2 has included allusions to "harassment" or "reprisals" as situations or conducts that States should prevent. Efforts were also made to align the content of article 5.3 with procedural norms and to ensure that investigations can take place notwithstanding the adoption of a judicial decision by national courts. Finally, articles 4 and 5 have been aligned to ensure that States have a duty to adopt interim or provisional measures, whether *ex officio* or by request of a victim, in situations that present a serious risk of a human rights abuse or an ongoing human rights abuse.

Core elements:

(1) Protection by States of victims (direct and indirect), representatives and witnesses from unlawful interference in connection with instituted proceedings, as well as from re-victimization;
(2) State duty to take measures to guarantee an enabling environment for the defense of human rights and the environment without threats, intimidation, violence, insecurity, harassment or reprisals;
(3) State duty to investigate corporate human rights abuses and to adopt measures against those responsible; and,
(4) Adoption of precautionary measures to prevent risks of corporate human rights abuse, either *ex officio* or by request of the victim.

2. OVERVIEW OF MAIN PROPOSALS

Throughout their interventions on article 5, States and other stakeholders made references to elements that should preferably be discussed in articles 1 (definitions), 3 (scope) or 16 (implementation), including to the addition of the phrase "affected persons and communities" to victims; to "human rights abuses and/or violations"; or to "gender-responsive" measures, among others. Numerous proposals to add qualifiers were also introduced regarding different paragraphs of article 5. Furthermore, several interventions introduced new elements to the draft legally binding instrument that would have different implications. Among them, the following were raised in the discussion during the 10th session.

On article 5.1: (1) Specification of the moment when the State duty to protect victims would begin, either when the State becomes aware or should have known of the existence of a human rights abuse; (2) Removal of references to the existence of a State duty to protect victims prior to the institution of proceedings; and (3) Merging of article 5.1 with article 4.2.(e), on the basis that they address the same subject matter, with the difference being their framing either as a State duty or as a right of victims.

On article 5.2: (1) Deletion of article 5.2; (2) Distinction between individuals, groups and organizations for the purpose of the exercise of rights; (3) Addition of a provision on the prohibition of interference through the use of public or private force with activities of peaceful protests and denunciation, including criminalization and obstruction.

On article 5.3: (1) Framing of the content of the article with existing obligations under international law; (2) Conditioning the content of the article to domestic legal frameworks and international

human rights law obligations; and (3) Strengthening of national capacities for the implementation of measures of investigation and sanction of human rights abuses.

On article 5.4: (1) Establishment of dedicated institutional or legal frameworks for the availability, accessibility and adequacy of precautionary measures. (2) References to consistency with domestic legal and administrative systems; (3) Reference to "irreparable" human rights abuse as a basis for precautionary measures; (4) Merging article 5.4 with article 4.4, on the basis that they address the same subject matter, with the difference being their framing either as a State duty or as a right of victims; (5) Addition of a provision on the duty of State parties to establish or designate a rapid response mechanism to address urgent situations of human rights abuses.

3. POTENTIAL IMPLICATIONS OF MAIN PROPOSALS

Regarding article 5.1.

On the specification of the moment when a State duty to protect victims would begin (either when the State becomes aware or should have known of the existence of a human rights abuse), or the removal of references to the existence of a State duty to protect victims prior to the institution of proceedings:

No international human rights treaty refers specifically to the moment in which the State duty to protect becomes applicable with respect to victims, their representatives, families, and witnesses. It would be questionable if such a precise temporal reference would be necessary, considering that under international law, the State must comply with all its existing obligations under treaties or customary international law from the moment it becomes bound by them. In this particular case, protection against unlawful interference prior to the institution of proceedings should be considered as part of the general duty of States to protect human rights. The Basic Principles and Guidelines on the Right to a Remedy and Reparation specifically refers to this matter, stipulating that States should take measures to protect against unlawful interference before the institution of judicial, administrative or other proceedings.

From a different standpoint, in relation to protection during and after the institution of proceedings, treaties and protocols addressing communications presented for violations of the rights protected by the treaty, typically establish that the obligation to provide interim measures may begin when the relevant Committee transmits a request to the State party concerned, which would be the moment in which the State becomes officially aware of the potential irreparable damage.

The Convention Against Torture would also seem to indicate in article 13 that the moment when the State becomes aware of an allegation of torture is the moment when the duty to adopt measures becomes relevant (*Steps shall be taken to ensure that the complainant and witnesses are protected against…*). Thus, it would be important for States to consider if the duty to provide protection becomes applicable when the State becomes aware (or should have been aware due to relevant facts and circumstances) of a human rights abuse, or if such a duty is applicable at all times, including even before a complaint or lawsuit has been filed.

On merging article 5.1 with article 4.2.(e):

Both articles 4.2.(e). and 5.1 address the question of protection against unlawful interference with human rights prior, during and after any proceedings for access to remedy have been instituted, and from re-victimization in the course of such proceedings. Differences exist in relation to the human rights covered, with article 4.2.(e) focusing on the right to privacy exclusively, and specifying that in addition to unlawful interference, intimidation and reprisals should also be covered. It also introduces a reference to appropriate protective and support services that are gender and age responsive.

Considering that the focus of both articles is generally the same (protection against unlawful interference before, during and after proceedings for access to remedy have been instituted, as well as from re-victimization), merging both articles into one single provision would not imply a

reduction in the level of protection stipulated by the provision. However, States may wish to consider if it is preferable to frame it as a right for victims, or if it is to be considered a State obligation *vis-à-vis* victims, their representatives, families, and witnesses.

Regarding article 5.2.

On the proposed deletion of article 5.2:
The proposal to delete article 5.2 should be read in light of existing international human rights standards, including UNGA Resolution 53/114, also known as the "Declaration on Human Rights Defenders" and the practice of States in this regard. States may wish to consider if deleting this provision would risk undermining the protection of human rights defenders.

On the distinction between individuals, groups and organizations for the purpose of the exercise of rights:
The distinction in the usage of the terms "individuals" or "persons" would not seem to be particularly problematic, although it must be noted that the Declaration on Human Rights Defenders refers specifically to individuals. Some recent instruments, such as the Escazú Agreement, refer to "persons".

Regarding the reference to groups and organizations, instruments referring to the role of human rights defenders generally acknowledge groups and organizations or organs of society, as this is directly related to the exercise of several internationally recognized civil rights, including the right to peaceful assembly and the right to freedom of association. Considering the aforementioned, States may wish to consider if removing references to "groups and organizations" would be contrary to internationally accepted standards, in force since at least 1976, regarding the right to peaceful assembly and the right to freedom of association.

On adding a provision on the prohibition of interference through the use of public or private force with activities of peaceful protests and denunciation, including criminalization and obstruction:
The proposal to add a new provision revolves around two questions: - prohibition of interference through the use of public or private security forces; and, - prohibition of criminalization and obstruction of their work.

The reference to the prohibition of interference through the use of public force is complex, particularly considering that article 21 of the ICCPR recognizes that limits may be established by States to safeguard public interests, including "national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others." While such a situation could be considered an obstruction to peacefully protesting and denouncing abuses, international human rights law recognizes that States shall assess, on a case-by-case basis, if those public interests are at stake. Considering that the use of public force in compliance with human rights is already covered under different international and regional human rights treaties and case law and would be subject to the law of State responsibility, States may wish to consider the extent to which the content of this provision should be kept, and in what form, in the draft LBI.

Separately, the prohibition of interference by private forces would imply that States should establish a legal framework requiring private security contractors to respect human rights in the course of their operations and activities, in line with the UNGPs and other relevant instruments addressing the role of private security providers with respect to human rights.

Regarding article 5.3.

On framing the content of the article with existing obligations under international law:
The proposal introduces a reference to the State duty to protect under international human rights law, and particularly to act with due diligence when a non-State actor harms human rights. Thus, the proposal focuses on the duty to investigate and take action (namely sanction and redress

any wrongdoing). With regard to the reference to domestic law, States may wish to consider the general duty to adopt measures, including in domestic legislation, to give effect to international legal obligations; but also that, due to its specificity, domestic law may be the more adequate place to define how the State is to act in light of a human rights abuse deriving from business activity, considering its legal tradition and system. In this regard, provided that domestic legislation is aligned with the international obligations of the State, maintaining a reference to domestic law may be adequate.

On conditioning the content of the article to domestic legal frameworks and international human rights law obligations:
As expressed by the Group of Legal Experts during the 10th session, introducing references in the text regarding consistency or accordance with domestic legal frameworks may have an effect of limiting the consistency with the international standard being developed. States may wish to consider in which instances such type of language may be relevant, without diminishing existing standards under international human rights law.

Furthermore, on the question of references to consistency with existing international legal obligations, including in the field of human rights, States may wish to consider to which extent they are necessary, considering the uneven level of ratification of international human rights instruments, and the fact that any provision would create a stand-alone obligation for State Parties to the LBI, despite other concurring obligations stipulated in other international instruments.

On strengthening of national capacities for the implementation of measures of investigation and sanction of human rights abuses:
The content included in article 5.3 would be a partial manifestation of the obligation of due diligence for States under international law, particularly in situations where prevention was not feasible. Thus, in such a scenario, States would have a duty to investigate, sanction and redress human rights abuses, in order to discharge their obligation to protect human rights. Considering that the type of duties involved in such a context would generally lead to administrative or criminal inquiries, they could be considered as being relevant for the purpose of facilitating access to remedy. States may wish to consider if such a proposal would be better aligned with the content of article 7 of the draft LBI.

Regarding article 5.4.

On the establishment of dedicated institutional or legal frameworks for the availability, accessibility and adequacy of precautionary measures:
The proposal contains two separate elements: - the addition of qualifiers for precautionary measures to ensure their availability, accessibility and adequacy; and, - the establishment of dedicated institutional or legal frameworks to that end.

On the addition of qualifiers, as exemplified in the proposals submitted for article 5.1, existing treaty language addressing interim measures exclusively make reference to “interim measures as may be necessary to avoid possible irreparable damage to the victims of the alleged violation”. Thus, adding adjectives may lead to subjective interpretations on what “available, accessible and adequate” means, as there may be different understandings in different legal systems. States may wish to consider if a general formulation, read in light of article 16.1 of the draft LBI, could be sufficient to cover these questions.

Regarding the second element, on the establishment of dedicated institutional or legal frameworks, article 16.1 already provides for such a duty for State Parties. Thus, States may wish to consider consolidating this type of proposals in article 16.1.

On the addition of references to “irreparable” human rights abuse as a basis for precautionary measures:

As expressed by the Group of Legal Experts during the 10th session, the purpose of interim or precautionary measures is preventing irreparable harm from materializing. In this regard, adding the qualifier of “irreparable” would be consistent with existing language in other international human rights instruments, but States may wish to consider if removing the qualifier “ongoing” is convenient, considering that certain harms may be of a continued nature. Furthermore, States may also wish to consider if adding several qualifiers to the provision, such as “urgent” and “serious”, could lead to difficulties to determine which situations that may lead to irreparable harm may require the adoption of interim or precautionary measures.

On merging article 5.4 with article 4.4:
Articles 5.4 and 4.4 address the same subject matter with very similar wording. The main difference is that article 4.4 puts the onus on the victim exclusively, while 5.4 considers that a victim may request precautionary measures, but the State may also act independently to adopt precautionary measures. States may wish to consider which option may be preferable for the protection of rights, considering that under certain circumstances, the victims may not be in a position to request the adoption of such measures, and also that the State may act on the basis of the protection of public interests.

On the addition of a provision on the duty of State parties to establish or designate a rapid response mechanism to address urgent situations of human rights abuses:
The proposal to establish a rapid response mechanism should consider the fact that interim or precautionary measures operate differently in domestic and international law (where, with some limited exceptions, they are mostly limited to parties involved in a dispute before the relevant body or court). Furthermore, States may want to consider if the nature of the proposal could be covered by elements already present in article 5.4.

ARTICLE 7 - ACCESS TO REMEDY

1. OBJECTIVE OF THE ARTICLE AND OVERVIEW OF CORE ELEMENTS

Objective: In his introduction of article 7 during the 10th session of the OEIGWG, the Chairperson-Rapporteur highlighted that the Updated Draft made an effort to simplify article 7, differentiating between legal and public policy aspects related to access to remedy and to liability, as well as between procedural and substantive elements of access to remedy.

Article 7.1 introduced a broader reference to State agencies that should provide access to justice and to different reparation mechanisms. Article 7.2 maintains references to general duties of State Parties regarding access to remedies, distinguishing between procedural obligations and those relating to substantive aspects. Among the former, the duty to adopt policies promoting access to justice and reparation that take into account the particular needs of victims at risk of vulnerability or marginalization is included, as well as the progressive reduction of the different legal and practical obstacles that may affect the capacity of a victim to access a State agency for the purpose of seeking remedy.

Article 7.3 addresses the content of policies related to access to justice and reparation, including the provision of effective legal aid throughout the legal process; access to information in relevant languages and accessible formats for older persons, children and persons with disabilities; and the possibility of filing requests for dissemination of information linked to human rights abuses, as well as addressing the risk of reprisals against victims. Article 7.4 establishes a non-exhaustive list of measures that State Parties shall adopt to overcome obstacles related to access to justice and effective reparation, including reducing the financial burden associated to judicial or administrative costs; introducing the possibility of the reversal of the burden of proof, or the application of a dynamic burden of proof, when applicable; consideration of civil procedure rules authorizing class actions, among others.

Finally, article 7.5 refers to the duties of States to adopt legislative or other measures to ensure effective reparation, consultation of victims on the functioning and design of remedy mechanisms, and monitoring the implementation of judicial or administrative decisions by business enterprises, as well as effective reparation and measures in cases of non-compliance.

Core elements:

(1) Competence of relevant authorities to enable access of victims to effective remedy and to justice, and to overcome obstacles to accessing mechanisms and remedies from an intersectional perspective.
(2) Adoption of policies to promote accessibility to relevant State agencies, while progressively reducing obstacles and ensuring the capacity to provide effective remedies.
(3) Guarantees of responsiveness of remedial mechanisms to the needs of victims, including through the provision of legal aid, access to reliable sources of information and disclosure, effective participation in relevant processes, addressing imbalances of power between victims and business enterprises, and protection against reprisals.
(4) Adoption of measures to reduce financial burdens on victims, ensuring deterrence from reprisals, facilitating the production of evidence (including through the reversal of the burden of proof and the dynamic burden of proof and through timely disclosure of evidence), and by ensuring the possibility of group actions.
(5) Adoption of measures to enhance the ability of State agencies to deliver or contribute to effective remedies, ensuring that victims are meaningfully consulted regarding the design and delivery of remedies, and enabling monitoring of the implementation of remedies by companies.

2. OVERVIEW OF MAIN PROPOSALS

Throughout their interventions on article 7, States made references to elements that should preferably be discussed in articles 1 (definitions), 3 (scope) or 16 (implementation), including to the addition of the phrase “affected persons and communities” to victims; to “human rights abuses and/or violations”; or to “gender-responsive” measures, among others. Numerous proposals to add qualifiers were also introduced regarding different paragraphs of article 7. Furthermore, several interventions introduced new elements to the draft legally binding instrument that would have different implications. Among them, the following were raised in the discussion during the 10th session.

Regarding article 7.1:

- Alignment of the reference to State agencies with judicial and non-judicial remedies in accordance with the UN Guiding Principles on Business and Human Rights.
- Addition of a provision (7.1.bis) stipulating that reparation processes and mechanisms in the context of large-scale industrial disasters are designed and implemented in consultation and with the participation of Indigenous Peoples and affected communities, that they are transparent and independent, that they can provide technical assistance and are sufficiently resourced.

Regarding article 7.2:

- Addition of a reference to the role of domestic laws in facilitating access to information, including through international cooperation.
- Inclusion of a reference that domestic laws and court proceedings facilitate access to information from States and corporate entities, including through disclosure of finances, relations and other information, and expanding admissible evidence.
- Removal of references to consistency with domestic legal and administrative systems.

Regarding article 7.2.(c):

- Deletion of the provision.
- Addition of the need to guarantee the availability of mechanisms and effective remedies as a consequence of the determination of legal liability in accordance with article 8 of the LBI.

- Addition of a provision (c bis) stipulating the need to ensure transparency in mechanisms and processes, and an independent design and implementation with participation of victims, affected persons and communities.

Regarding article 7.3:
- Introduction of a reference to consistency with domestic law.
- Addition of the duty to provide legal assistance to victims, affected individuals and communities.
- Full revision of article 7.3, stipulating the provision of legal assistance to victims according to national legislation, including availability and accessibility of information to victims about their rights and the status of their claims, including for children and persons with disabilities; guaranteeing the rights of victims to be heard in all stages of proceedings in a gender, age and disability-sensitive manner, while avoiding stereotyping; avoiding unnecessary costs or delays for bringing a claim and throughout the process; and removing legal obstacles, including *forum non conveniens*, unless and adequate alternative forum that can provide remedy exists.

Regarding article 7.3.(a):
- Removal of references to the provision of legal aid throughout the legal process.
- Introduction of references to the provision of legal aid when accessing and interacting with judicial and non-judicial mechanisms.

Regarding article 7.3.(b):
- Removal of references to the facilitation of requests for disclosure of relevant information regarding business involvement with human rights abuse.
- Removal of references to “effective” from the concept of remedy.

Regarding article 7.3.(c):
- Deletion of provision.

Regarding article 7.3.(d):
- Deletion of provision.
- Addition of a provision (d bis) stipulating the removal of legal obstacles, including *forum non conveniens*, to initiate proceedings in the courts of another State party.
- Addition of a provision (d ter) stipulating the removal of legal obstacles to the justice system in cases involving business activities.

Regarding article 7.4:
- Addition of a reference to ensuring that court fees and rules do not place an unfair and unreasonable burden on victims or become a barrier to commencing proceedings, and to introduce a possibility of waiving certain costs in suitable cases.

Regarding article 7.4.(a):
- Removal of examples of financial burdens in proceedings.
- Limitation of the application of the measures to reduce financial burden to listed examples.

Regarding article 7.4.(d):
- Relevance of reversal of or dynamic burden of proof for the determination of corporate liability.

Regarding article 7.4.(e):
- Modification of language to make this an obligation of conduct (“seeking to ensure”) rather than one of result (“ensuring”).

Regarding article 7.4.(f):
- Modification of the content of obligation, from one of result to one of conduct.
- Addition of a provision (f bis) stipulating the duty to ensure the existence of appropriate measures to access information on business activities essential for the protection of internationally recognized human rights.

Regarding article 7.5:
- Deletion of all sub-provisions, leaving only the chapeau of article 7.5.
- Addition of references to the duty to enact or amend domestic laws to reverse the burden of proof and requiring State and corporate entities involved to provide evidence of acquittal.

Regarding article 7.5.(c):
- Addition of a provision (7.5 bis) stipulating the duty to provide effective mechanisms for the enforcement of remedies.

3. POTENTIAL IMPLICATIONS OF MAIN PROPOSALS

Regarding article 7.1.

On the alignment of the reference to State agencies with judicial and non-judicial remedies in accordance with the UN Guiding Principles on Business and Human Rights:
Existing instruments under international human rights law do not generally refer in their operative clauses to other legal instruments, unless they are protocols. While reference to the right to an effective remedy through judicial and non-judicial mechanisms is entirely consistent with international and regional human rights law and practice, States may wish to consider if it is necessary to make an express reference to the UNGPs beyond the preamble.

On the addition of a provision (7.1.bis) stipulating that reparation processes and mechanisms in the context of large-scale industrial disasters are designed and implemented in consultation and with the participation of Indigenous Peoples and affected communities, that they are transparent and independent, that they can provide technical assistance and are sufficiently resourced:
Consultation and participation of relevant stakeholders in the design of reparation processes and mechanisms and in their implementation is one of the elements highlighted in international instruments such as the UN Guiding Principles on Business and Human Rights, as well as in related guidance deriving from the Accountability and Remedy Project. Furthermore, the reference to independence from the business enterprises causing or contributing to the harm may be relevant, considering the need to protect policy making from vested interests. In addition, having independent technical assistance and sufficient resources may be considered as part of the elements of an effective remedy.

States may wish to consider several aspects, including the extent to which participation of different stakeholders in the design or revision of existing mechanisms may be necessary, particularly in judicial and non-judicial/administrative mechanisms, or if such exercise should be limited to large-scale industrial disasters, and not for all mechanisms that may be relevant in the context of access to remedy for business-related human rights abuses.

Regarding article 7.2.

On the addition of a reference to the role of domestic laws in facilitating access to information, including through international cooperation:
Access to information, particularly in relation to transnational litigation, is essential for access to an effective remedy, including through mutual legal assistance. This is so because assessment of the liability of a specific entity within a corporate group invariably depends on disclosure of internal corporate documents that are not publicly accessible. States may wish to consider if a stand-alone reference to access to information in the context of article 7, or a reference in articles 12 (on mutual legal assistance) or 13 (on international cooperation), or a combination of both, may be more appropriate.

Concerning the reference to enabling courts to allow proceedings in appropriate cases, as this issue relates particularly to the question of judicial competence, States may wish to consider if inclusion in article 9 on jurisdiction may be more appropriate.

On the inclusion of a reference that domestic laws and court proceedings facilitate access to information from States and corporate entities, including through disclosure of finances, relations and other information, and expanding admissible evidence:

Access to information, particularly in relation to transnational litigation, is essential for access to an effective remedy. One key element in that regard is access to information regarding corporate structures, finances and relations, especially regarding corporate groups and supply chains such as those addressed by this draft instrument. States may wish to consider how this proposal relates to the different provisions in article 7.3, with a view to clarifying the scope of access to information in the context of access to remedy.

Regarding article 7.2.(c):

On adding a reference to the need to guarantee the availability of mechanisms and effective remedies as a consequence of the determination of legal liability in accordance with article 8 of the LBI:

Under international and regional human rights law, the right to an effective remedy has developed through treaties and their interpretation to encompass not just the State duty to ensure the availability and accessibility of judicial and administrative mechanisms for victims of human rights violations, but also that they can provide reparation. This entails the obligation to have adequate remedies available in the domestic legal system, as well as the possibility for judicial or administrative authorities to determine the liability of State or non-State actors and determine adequate measures of reparation as a consequence. Considering this, States may wish to consider if adding such a reference here is necessary.

On adding a provision (c bis) stipulating the need to ensure transparency in mechanisms and processes, and an independent design and implementation with participation of victims, affected persons and communities:

Consultation and participation of relevant stakeholders in the design of reparation processes and mechanisms and in their implementation is one of the elements highlighted in international instruments such as the UN Guiding Principles on Business and Human Rights, as well as in related guidance deriving from the Accountability and Remedy Project. States may wish to consider this proposal in line with that made in article 7.1, including the extent to which participation of different stakeholders in the design or revision of existing mechanisms may be necessary, particularly in judicial and non-judicial/administrative mechanisms.

Regarding article 7.3.

On the addition of a duty to provide legal assistance to victims, affected individuals and communities:

Under international and regional human rights law, the provision of legal assistance as part of judicial guarantees is recognized as a State duty in relation to criminal charges brought by the State against a person.

However, provision of legal assistance may be necessary in other circumstances, including where a person or group of persons institute judicial or non-judicial proceedings against business enterprises for the protection of their rights, without which the effectiveness of remedy may not be guaranteed. Indeed, in certain circumstances, the existence of legal assistance provided by the State is essential not just to access judicial or non-judicial mechanisms, but also to enhance the possibility of success in a judicial or administrative process.

States may wish to consider which is the more adequate formulation to ensure that the provision of legal assistance, as a central component of the right to an effective remedy, is included in the draft LBI.

Regarding article 7.3.(a):

On the removal of references to the provision of legal aid throughout the legal process:
The provision of legal aid expressed in this section should be read in light of the general duty of States to ensure human rights. In some circumstances, the provision of legal aid may be a necessary State action to ensure that victims of business-related human rights abuses can have access to an effective remedy. Considering the aforementioned, States may wish to consider if removing this reference may be contrary to existing obligations under international and regional human rights law.

On the introduction of references to the provision of legal aid when accessing and interacting with judicial and non-judicial mechanisms:
The provision of legal aid expressed in this section should be read in light of the general duty of States to ensure human rights. In some circumstances, the provision of legal aid may be a necessary State action to ensure that victims of business-related human rights abuses can have access to an effective remedy. Considering the aforementioned, States may wish to consider if this addition would be useful to reinforce the fulfilment of existing obligations under international and regional human rights law.

Regarding article 7.3.(b):

On the removal of references to the facilitation of requests for disclosure of relevant information regarding business involvement with human rights abuse:
Access to information is an essential component of the right to an effective remedy, particularly in the context of judicial and administrative procedures. Without access to information regarding available remedies, remedy itself may not be effective. However, a mandated disclosure of relevant information on business involvement with human rights abuses may face important challenges, including inconsistency with judicial guarantees, presumption of innocence and due process, in addition to divergences among different legal systems and traditions. Furthermore, States may wish to consider this provision in light of the provision on the reversal of the burden of proof, or the dynamic application of the burden of proof.

On the removal of references to “effective” from the concept of remedy:
Since the adoption of the Universal Declaration of Human Rights, the right to remedy has been qualified by its “effectiveness”. It has been consistently interpreted by UN human rights treaty bodies and regional courts along that view, and reiterated in international and regional human rights treaties. States may wish to consider if removing such a qualifier in an instrument partially focusing on ensuring remedies for victims of business-related human rights abuses is desirable.

Regarding article 7.3.(c):

On the proposal to delete the provision:
The current wording of the Updated draft LBI contains different provisions aimed at promoting equality of arms and removing imbalances and obstacles between victims and business enterprises before judicial and non-judicial mechanisms. States may wish to consider if making an express reference to this question in the operative paragraphs is necessary (considering that many other paragraphs in article 7 already explicitly address the specific obstacles for access to remedy), or if a reference in the preambular paragraphs may be more adequate.

Regarding article 7.3.(d):

On the proposal to delete the provision:
Articles 4.2.(e) and 5.2 already stipulate provisions concerning the adoption of measures to protect victims from reprisals before, during and after any proceedings have been instituted. In light of the aforementioned, States may wish to consider if repetition in this provision is necessary.

On the proposal to add a provision (d bis) stipulating the removal of legal obstacles, including *forum non conveniens*, to initiate proceedings in the courts of another State party:
The doctrine of the ***forum non conveniens*** has been generally recognized as an obstacle to access to remedy in business and human rights cases, because such jurisdiction disputes are invariably costly, protracted and hard fought by parties between whom there is generally no equality of arms. Consequently, ***forum non conveniens*** court rulings may result in depriving victims of accessing home State courts where they could obtain effective access to remedy, and conversely because in host State courts, victims are more likely to face obstacles addressed in articles 4, 5 and 7 of this draft instrument.

The regulation of *forum non conveniens* naturally falls within Article 9, which addresses adjudicatory jurisdiction. Indeed, Article 9(3) of the current draft specifically deals with this matter. The current draft does not propose the removal of *forum non conveniens*. Rather, it calls for the exercise of jurisdictional discretion with "respect for the rights of victims".

Without prejudice to the discussion of *forum non conveniens* in the second intersessional thematic consultation, there are reasons to refrain from the removal of *forum non conveniens* and instead to limit its operation. This is because in common law countries, *forum non conveniens* serves as the primary mechanism for dealing with parallel and related proceedings. Removing *forum non conveniens* without introducing an alternative mechanism for parallel and related proceedings would deprive States with a common law system of a fundamental element of private international law and, therefore, provide a potential obstacle for the adoption of the treaty by those States.

That said, it should be pointed out that, while the removal of *forum non conveniens* remains controversial, this is the solution recommended by the Council of Europe Committee of Ministers to its Member States. It is also proposed by the ILA Committee on International Civil Litigation and the Interests of the Public in its Sophia Conference Resolution of 2012, where the jurisdiction of a court was based on one of the jurisdictional rules proposed by the Committee. In other cases, ie. where jurisdiction was not based on a proposed jurisdictional rule, the Committee proposed to limit the operation of *forum non conveniens*. Finally, *forum non conveniens* is excluded where the jurisdiction of a court of an EU Member State is assumed on the basis of the Brussels I Regulation.

On the proposal to add a provision (d ter) stipulating the removal of legal obstacles to the justice system in cases involving business activities:
The current wording of the Updated draft LBI contains different provisions aimed at removing legal obstacles in cases involving human rights abuses by business enterprises. States may wish to consider if making a reference to this general objective in the operative paragraphs is necessary, or if a reference in the preambular paragraphs may be more adequate.

Regarding article 7.4.

On the proposal to add a reference to ensuring that court fees and rules do not place an unfair and unreasonable burden on victims or become a barrier to commencing proceedings, and to introduce a possibility of waiving certain costs in suitable cases:
Under international human rights law, including the UNGPs, fulfilling the right to an effective remedy may require States to take steps to remove legal and practical obstacles. This may encompass, among other things, the waiving of relevant fees to commence proceedings, which may be determined on a case-by-case basis. States may wish to consider if a stand-alone provision may be convenient to that end.

Regarding article 7.4.(a):

On the removal of examples of financial burdens in proceedings:

Taking into account differences in legal systems, States may wish to consider if the addition of examples is necessary in light of the first phrase of paragraph (a).

On the limitation of the application of the measures to reduce financial burden to listed examples:
Considering differences in legal systems, States may wish to consider if a closed list of examples is convenient, or if it could limit its applicability in different national contexts.

Regarding article 7.4.(d):

No comments were submitted by States in relation to this provision; however, the Group of Legal Experts would like to highlight the relevance of this provision for access to remedy in general, as well as its connection to human rights due diligence as a standard of conduct for the determination of corporate liability.

Regarding article 7.4.(e):

On the proposal to modify the language to make this an obligation of conduct ("seeking to ensure") rather than one of result ("ensuring"):
Under international human rights law, State duties may be considered obligations of means whenever they relate to conduct undertaken by non-State actors. However, when the fulfilment of duties depends entirely on the conduct of the State, they are typically characterized as obligations of result. Considering the subject matter of this paragraph may relate to procedural rules, which are determined by the State via legislation or regulation, States may wish to consider the pertinence of framing this section as an obligation of means rather than as an obligation of result.

Regarding article 7.4.(f):

On the proposal to modify the content of obligation, from one of result to one of conduct:
Under international human rights law, State duties may be considered obligations of means whenever they relate to conduct undertaken by non-State actors. However, when the fulfilment of duties depends entirely on the conduct of the State, they are typically characterized as obligations of result. Considering the subject matter of this paragraph may relate to procedural rules, which are determined by the State via legislation or regulation, States may wish to consider the pertinence of framing this section as an obligation of means rather than as an obligation of result.

On the proposal to add a provision (f bis) stipulating the duty to ensure the existence of appropriate measures to access information on business activities essential for the protection of internationally recognized human rights:
Access to information is an essential component of the right to an effective remedy, particularly in the context of judicial and administrative procedures. Without access to information regarding available remedies, remedy itself may not be effective. However, States may wish to consider if such an addition would be necessary in this section, taking into account that references to the reversal of the burden of proof or the dynamic burden of proof are already present in article 7.4.(d).

Regarding article 7.5:

On the proposal to delete all sub-provisions, leaving only the chapeau of article 7.5:
The references contained in paragraphs (a) and (b) of article 7.5 are explored in detail in previous sections of article 7; thus, States may wish to consider if it is necessary to reiterate such duties. Furthermore, the reference in paragraph (c) would largely fall under the qualifier of "effective" remedy; States may wish to consider if it would be necessary to maintain such a reference in article 7.5. Finally, article 16.1 of the draft LBI already contains a general reference to the duty of State parties to adopt all necessary legislative, administrative or other measures to give effect to the LBI; States may wish to consider if it is necessary to reiterate such duties.

On the proposal to add references to the duty to enact or amend domestic laws to reverse the burden of proof and requiring State and corporate entities involved to provide evidence of acquittal:
States may wish to consider if such an addition would be necessary in this section, taking into account that references to the reversal of the burden of proof or the dynamic burden of proof are already present in article 7.4.(d).

Regarding article 7.5.(c):

On the proposal to add a provision (7.5 bis) stipulating the duty to provide effective mechanisms for the enforcement of remedies:
Recognition and enforcement of judgments is an essential aspect of the right to an effective remedy, particularly in the context of transnational litigation. States may wish to consider if references to this question should be introduced in article 7, or if reference in articles 12 and/or 13 should expressly refer to and regulate recognition and enforcement of judgments.