

First intersessional thematic consultation, focused on: Article 4 (Rights of victims), Article 5 (Protection of victims), and Article 7 (Access to remedy) towards the 11th session of the Open-ended Intergovernmental Working Group (OEIGWG) on transnational corporations and other business enterprises with respect to human rights

Article 5

This statement is made on behalf of the International Service for Human Rights and the Centre for International Environmental Law

As general comment, States shall recognize, protect, respect, and fulfill the right to promote, defend, and to strive for the protection and realization of human rights and fundamental freedoms at the national, regional, and international levels. In other words, the States shall protect, respect and fulfill the right to defend rights. In this sense, States shall also ensure a safe and enabling environment for human rights defenders which would include adopting measures to prevent attacks against them.

Since the adoption of the UN Declaration on Human Rights Defenders, the increase number of cases of intimidation, harassment, criminalization and murders against human rights defenders have increased. This is in particular in cases where human rights defenders raise concerns in business related issues and face reprisals in many ways. For example, BHRRC has tracked more than 530 lawsuits that bear the hallmarks of a Strategic Lawsuit against Public Participation globally. This is the reason why we support that 5.2 remains in the text.

We are also against removing the reference to: “groups and organizations”. Keeping this language would be consistent with the UN Declaration and Article 9(1) of the Escazu Agreement which includes persons, groups and organizations: “Each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity”.

Furthermore, the definition of a “human rights defender” should include any person who, individually or in association with others, or any group or organ of society that, acts or seeks to act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms, at the local, national, regional, and international levels. This two dimensions follow the UN Declaration, but also regional agreements like the Escazu Agreement and case law such as the I/A Court HR Case of Members of the José Alvear Restrepo Lawyers Collective v. Colombia; Baraona Bray v. Chile, Luna Lopez v. Honduras, etc.

This definition has a broad understanding so this should include also workers, members of trade unions or other individuals or associations promoting human rights; but also other persons that could be included in the future that would enter in the category of human rights defender. We would then suggest to reflect this definition in article 5.2.

It is important also to continue the reference to “environment” in this paragraph considering the nature of this treaty, the centrality of the right to a clean, healthy and sustainable environment in the context of corporate conduct, and also considering that most of the threats, intimidation, violence and reprisals occur against EHRDs. The most dangerous sectors for defenders are oil and gas companies, renewal energies and agrobusinesses.

We would also be in favour to support the explicit reference to EHRDs, as proposed by Mexico. This would follow also be consistent with the HRC resolution 40/11 and the General Assembly resolution 78/216, both adopted by consensus. These resolutions recognize the vital role of EHRDS and the risks that they face.