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Discussion on Articles 2 (Statement of Purpose) and 8 (Rights of Victims)
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Article 2. Statement of Purpose

Amnesty International is in full agreement that securing access to justice, remedy and prevention should be at the core of this treaty. I will offer three comments:

1. **Prevention** should be more prominently articulated as a purpose (at present, it reads as a passing comment subsumed within a statement focused primarily on remedy);
2. Make **corporate accountability** a specific purpose (although it is comprised within the larger definition of remedy, the context of impunity this treaty is trying to address justifies making this a statement of purpose of its own);
3. Suggest the additional key purpose of **empowering** individuals and communities whose rights are at risk of abuse from corporate actors; and human rights defenders who work to defend and protect those rights.

Article 8: Rights of Victims

Amnesty International welcomes Article 8 dedicated to the rights of victims. Many provisions in this article address critical issues that should be preserved relating to legal assistance, jurisdiction of courts and other authorities, effective enforcement of remedies, duty to investigate, amongst others. I have one general comment, and four comments on specific provisions:

General comment:

If one of the main purposes of this treaty is prevention, equally important to protecting the rights of victims is to protect the rights of **individuals and communities** whose human rights are at risk of abuses, and of **human rights defenders** who work to defend these rights. Victims, of course, must be protected and their right to remedy guaranteed, but the treaty must try to ensure no one becomes a victim in the first place.

A new article should address key human rights, and corresponding duties and protections, of **individuals and communities** who are at risk of becoming victims of corporate abuse, and of **human rights defenders** who work to defend their rights.

This should include provisions relating to access to information, participation in decision-making, meaningful and inclusive consultation, injunctive relief and precautionary measures, Free, Prior and Informed Consent of Indigenous Peoples, protection of human rights defenders and of the rights of minorities, and special provisions to address the differentiated, sometimes disproportionate and gender-specific abuses suffered by women in the context of corporate activities.

Comments on specific provisions:

Duty to remove barriers

Article 8 recognises the right of victims to “fair, effective and prompt access to justice and remedy”. This right entails a duty on states to remove barriers to justice and remedy. However, at no point

does the draft clearly state an obligation of states to identify and remove barriers. This should be corrected. The treaty should lay down an express **duty of States to identify and remove barriers** (a sort of catch-all duty) and then address widely known and well-documented barriers by establishing a clear obligation on States to take the measure or range of measures necessary to remove or mitigate them.

What State?

Articles 8.2 and 8.3 need to clearly articulate who are the states under a duty to ensure courts and other competent authorities have jurisdiction to hear claims and to investigate alleged human rights abuses. This might require cross referencing with Article 5 that deals with Jurisdiction. However, note that Article 5 on Jurisdiction fails to address the basis for criminal jurisdiction. This is a gap that a future draft should address.

Access to information/confidentiality

The meaning of “information relevant to the pursuit of remedies” under Article 8.4 is unclear. Is this referring to existing avenues of redress or information necessary to defend a claim in court? One way or the other, this is too limited. Access to information is critical before abuses occur, and to help prevent them. I would recommend a separate article that deals expressly, and in a much more comprehensive way, with the right of access to information and implications for duty-bearers.

In addition, to subject access to information to “confidentiality rules under domestic laws” without any nuance or caveats is highly problematic, as it is often these rules, crafted with corporate interests in mind, that impede or overly restrict access to information necessary for the effective protection of human rights.

Protection of Human Rights Defenders

Amnesty International welcomes protections to “victims, representatives, families and witnesses” under Article 8.11 (and 8.12), but this list is limited as it does not include human rights defenders that do not fall under any of these categories. It is also limited in that it operates entirely within the context of formal legal proceedings. The scope of this provision must be broadened in two respects: it should operate not just in the context of litigation but in the context of broader work to defend and protect human rights; and it should benefit not just “victims, representatives, families and witnesses”, but also human rights defenders working to protect their rights.

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