

Statement by ***Gladice Pickering – Ministry of Justice and Office of the Attorney-General,*** 4th session of the WG on Transnational Corporations and Human Rights, Geneva, 16 October 2018

Item 4 – Articles 9

Mr Chair,

Article 9: Prevention:

We thank the panellists for their insights. Article 9 is perhaps the most important article in the treaty as prevention is an indispensible pillar upon which protection, promotion and fulfilment of human rights is built.

For effective prevention to take place, there has to be an effective early warning mechanism in place to detect and address the risks involved. This can be done through human rights due diligence. We agree that this should be done throughout the supply chain and at all stages. Too many violations of human rights occur undetected because of the many links in the supply chain that are not monitored. A façade of due diligence should be exposed in time in order to avoid continuation thereof.

We propose Article 9 to refer to the term “human rights due diligence”, as indicated by one of the panellists, as this will capture the essence of the prevention sought through the treaty. We further propose that the listing in Article 9 (g) be carefully considered in order to be all-inclusive as the list currently poses a risk of exclusion of groups with a heightened risk of violation, especially farmers and/or farmworkers. We also propose this sub-article to include awareness raising as a specific element of the consultations alluded to.

Whilst SME’s should not be encumbered with unnecessary due diligence administrative burdens, they should not be excluded from the primary obligations to prevent abuses from occurring.

Mr Chair,

Despite the fact that businesses do not operate in a vacuum of legal responsibilities, the realities on the ground, based on evidence of abuses and impunity, remains a stark reminder of the gaps in the international legal framework regarding the ETO’s of TNC’s. Therefore, we maintain that this treaty is necessary and the work of this WG remains critically relevant.

I thank you.